SUPREME COURT OF THE UNITED STATES.

No. 251.

THE CITY OF HANNIBAL, PLAINTIFF IN ERROR,

vs.

THOMAS FAUNTLEROY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the March term, 1879, thereof, between Thomas Fauntleroy, plaintiff, and The City of Hannibal, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States at Washington, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this eighteenth day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

Issued at office, in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.]

M. M. PRICE.
Clerk Circuit Court United States,
Eastern District of Missouri.
By A. P. SELBY, *Deputy.*

Allowed by—

SAMUEL TREAT, *Judge.*

2 *Return to writ.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at office, in the city of St. Louis, this 16th day of June, A. D. 1879.

[SEAL.]

M. M. PRICE,
Clerk of said Court.
By T. L. CRAWFORD, *D. C.*

(Indorsed:) No. 1300. United States circuit court, eastern district of Missouri. vs. . Writ of error. To the court of the of Missouri. Returned and filed day of , 187 , , clerk.

3 The United States of America to Thomas Fauntleroy, or his attorneys of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein The City of Hannibal is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this eighteenth day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

SAMUEL TREAT,
Judge United States Circuit Court,
Eastern District of Missouri.

4 We acknowledge service of the within citation this eighteenth day of April, A. D. 1879.

GRANT & GRANT,
JOSEPH SHIPPEN,
Attorneys of Defendant in Error.

(Indorsed:) 1300. United States court, district of Missouri. vs. . Citation. Filed , 187 . , clerk.

5 In the circuit court of the United States for the eastern district of Missouri.

Be it remembered that heretofore, to wit, on the 21st day of August, A. D. 1878, there was filed in the clerk's office of said court a petition, which is in words and figures following, to wit:

6 *Petition.*

In the United States district court, eastern district of Missouri.

THOMAS FAUNTLEROY }
vs.
THE CITY OF HANNIBAL. }

The plaintiff, Thomas Fauntleroy, who avers that he is a citizen of the State of Virginia, complains of the defendant, The City of Hannibal, which he avers to be a municipal corporation, created by, existing under the laws, and a citizen of, the State of Missouri; and, for cause thereof, states that said defendant at said circuit heretofore, to wit, on the first day of April, A. D. 1858, by its certain writings obligatory, Nos. 3, 4, 5, 6, 7, and 8, sealed with the corporate seal of said city, signed by Geo. W. Shields, its mayor, and countersigned by A. O. Nash, its auditor, bearing the said date and here shown to the court, promised to pay A. O. Nash, auditor of said city, or bearer, at the American Exchange Bank, New York one thousand dollars by each of said writings obligatory, for value received, without defalcation, twenty years after date,

with interest on the same at the rate of ten per cent. per annum, payable semi-annually at the same place; that is to say, fifty dollars on the first days of October and a like sum on the first days of April in each year, on each of said writings obligatory, on the presentation of the coupons thereto severally annexed, until the payment is well and truly made of said principal sums.

7 That said bonds each recite that they were issued to pay calls on subscriptions for stock in the Pike County Railroad, Illinois; that said bonds were issued to aid in the construction of said railroad, and said defendant received the stock in payment of which said bonds were issued, and it, as its assigns, still holds the same.

That said defendant has heretofore paid one or more installments of interest on said bonds, and paid one set of said bonds, Nos. 4, 5, and 6, of $1,000 each, which fell due April 1, 1874.

That heretofore Thomas W. Fauntleroy, through whom the plaintiff claims in this court, brought his action at law against said defendant on said bonds, to recover the interest, among others, on the same bonds on which this suit is brought, including the interest thereon from April 1, 1861, to October 1, 1870. That said defendant was duly served with process in said cause and such proceedings were had therein that, at the April term, 1871, of this court, and on the 3d day of April, 1871, a judgment was rendered in favor of said plaintiff for the sum of $13,709.84, due on said bonds, and a stipulation was thereupon entered into with said defendant for the levy and collection of a tax to pay said judgment, and said taxes were levied and collected, and said judgment paid in full in March, 1873, by said defendant.

That heretofore Thomas W. Fauntleroy, through whom plaintiff claims, in this court brought another suit against said defendant on, among others, the same bonds in suit herein, to recover interest thereon from April 1, 1871, to April 1, 1874, and the principal of said bonds 4, 5, and 6, due April 1, 1874, and said defendant was duly served with process, and such proceedings were had therein that, on April 1, 1874, at the April term of 1874 of said court, said plaintiff recovered a judgment for said interest and principal against said defendant amounting to $6,867.50, which said judgment has been fully paid and satisfied by said defendant.

That for said interest coupons or interest warrants were annexed to each of said bonds, payable to bearer, as they severally became due.

That there is due and unpaid thereon, though the payment there-
8 of has been repeatedly demanded, the installments of interest, or coupons No. 33, on each of said bonds Nos. 3, 4, 5, 6, 7, and 8, which fell due October 1st, 1874, being six coupons of fifty dollars each, making three hundred dollars ($300);

And also the installments of interest, or coupons No. 34, on each of said bonds Nos. 3, 4, 5, 6, 7, and 8, which fell due April 1, 1875, being six coupons of fifty dollars each, making three hundred dollars (300);

And also the installments of interest, or coupons No. 35, on each of said bonds Nos. 3, 4, 5, 6, 7, and 8, which fell due October 1, 1875, being six coupons of fifty dollars each, making three hundred dollars ($300);

And also the installments of interest, or coupons No. 36, on each of said bonds 3, 4, 5, 6, 7, and 8, which fell due April 1, 1876, being six coupons of fifty dollars each, making three hundred dollars ($300);

And also the installments of interest, or coupons No. 37, on each of said bonds Nos. 3, 4, 5, 6, 7, and 8, which fell due October 1, 1876, being six coupons of fifty dollars each, making three hundred dollars ($300);

And also the installments of interest, or coupons No. 38, on each of said bonds Nos. 3, 4, 5, 6, 7, and 8, which fell due April 1st, 1877, being six coupons of fifty dollars each, making three hundred dollars ($300);

And also the installments of interest, or coupons No. 39, on each of said bonds Nos. 3, 4, 5, 6, 7, and 8, which fell due October 1st, 1877, being six coupons of fifty dollars each, making three hundred dollars ($300);

And also the installments of interest, or coupons No. 40, on each of said bonds Nos. 3, 4, 5, 6, 7, and 8, which fell due April 1st, 1878, being six coupons of fifty dollars each, making three hundred dollars ($300);

And also the principal sum of said bonds Nos. 3, 4, 5, 6, 7, and 8, which fell due April 1st, 1878, being six bonds of one thousand dollars each, making six thousand dollars ($6,000);

Being altogether forty-eight coupons of fifty dollars each, making two thousand four hundred dollars ($2,400),

And six bonds of one thousand dollars each, making six thousand dollars ($6,000); and making a total sum of eight thousand four hundred dollars.

9 That a copy of one each of said bonds and coupons is hereto attached and made part hereof; the others are like these, except as to the Nos. and dates when coupons are due.

That the plaintiff is the bearer and holder of each of said bonds and coupons.

That by reason of the foregoing allegations, and each thereof, the said defendant, The City of Hannibal, is estopped from denying the regularity and validity of the execution and issue of said bonds and said judgments, and each one thereof is a complete bar to any defense which said defendant can set up against a recovery on said bonds and coupons.

Wherefore the said defendant, The City of Hannibal, has become liable to pay, and an action has accrued to the plaintiff to have and recover of said defendant, on the said several installments of interest, or coupons, and the said principal sums of said bonds, as above set forth, together with (7) seven per cent. interest on said coupons, or installments of interest, and ten per cent. (10) interest on said bonds, from the dates at which they severally fell due, for which, with interest and costs, the plaintiff prays judgment.

THOMAS FAUNTLEROY,
By GRANT & GRANT, *his Att'ys.*

STATE OF IOWA,
Scott County, ss:

I, Whit. M. Grant, being duly sworn, depose and say that I am one of plaintiff's attorneys; that this action is for the recovery of money only, and is upon written instruments in my possession and under my control; that I have read the foregoing petition, and the allegations thereof are true, as I verily believe.

WHIT. M. GRANT.

Subscribed and sworn to by Whit. M. Grant, this 17th day of August, 1878.

H. LACEY,
Notary Public, Scott County.

10 *Copy of bond.*

No. 8.] STATE OF MISSOURI. $1,000.00.

Bond of the city of Hannibal issued to pay calls on subscription for stock in the Pike County Railroad, Illinois.

Twenty years after date, City of Hannibal promises to pay to the order of A. O. Nash, auditor of said city, or bearer, at the American Exchange Bank, New York, one thousand dollars, for value received, without defalcation, with interest on the same at the rate of ten per cent. per annum, and payable semi-annually at the same place.

That is to say, fifty dollars on the first day of October, and a like sum on the first day of April, on each year, upon presentation of the coupons severally hereto annexed, until the payment is well and truly made of the said principal sum of one thousand dollars.

In witness whereof I, the mayor of said city, hereto subscribe my name and cause the seal of said city to be affixed, and the auditor of the said city countersigns the same, at the city aforesaid, this first day of April, A. D. 1858.

GEO. W. SHIELDS, *Mayor.*

A. O. NASH,
Auditor.

Copy of coupon.

$50.]

Cashier of the American Exchange Bank, New York, pay the bearer $50 on the 1st day of October, 1874, for one-half year's interest on bond issued by the city of Hannibal in aid of the construction of the Pike County Railroad, Illinois.

No. 33, B. 8.

A. O. NASH,
Auditor.

11 And on the said 21st day of August, 1878, the defendant filed the following waiver of process, &c., to wit:

In the United States circuit court, eastern district of Mo.

THOMAS FAUNTLEROY
vs.
THE CITY OF HANNIBAL.

We hereby accept service of the foregoing petition and receive copy, waive summons & copy by clerk, and hereby enter the appearance of The City of Hannibal in and to said cause; waive separate count on each bond and coupon, and agree that plaintiff may file one general short petition instead, and waive filing of bonds & coupons, provided they are produced at the trial.

J. M. & C. H. KRUM,
For Defendant, The City of Hannibal.

And afterwards, on the 28th day of September, 1878, by leave of court the plaintiff filed the following amendment to original petition, to wit:

12 Circuit court of the United States for the eastern district of Missouri, September term, 1878.

THOMAS FAUNTLEROY
vs.
THE CITY OF HANNIBAL.

The said plaintiff, by leave of the court, makes the following amendment and addition to his petition: That he is the executor of Thomas W. Fauntleroy, the plaintiff referred to in said judgments, and holds the said coupon bonds and coupons in trust for the creditors and heirs of Thomas W. Fauntleroy.

The plaintiff further avers that an act of the legislature of Missouri, approved February 27, 1857, was passed to amend the charter of the city of Hannibal, and that by said amendment the city council, among other things, was authorized to subscribe for and take stock in any railroad terminating at the city of Hannibal, or upon the banks of the Mississippi River, opposite to said city, in the State of Illinois; but before such subscription should be valid, it should be ratified by a majority of the tax-payers, at a poll to be opened for that purpose.

13 Said city was authorized, by the same amendment, to borrow money on the credit of the city, at a rate not exceeding ten per cent., unless a vote of two-thirds of the qualified voters, at a poll, to be opened for that purpose, should authorize a greater rate.

And after the passage of said act the said city council passed an ordinance authorizing and directing the mayor to subscribe and take for the city of Hannibal one hundred thousand dollars in stock in the Pike County Railroad, having its western terminus on the bank of the Mississippi River, at a point in the State of Illinois opposite the city of Hannibal, within one-half a mile of the western terminus of the Suy Carty Plank Road; said stock to be paid for in bonds of the city of Hannibal, at their par value, which bonds were to be made payable not exceeding twenty years from the date of their issue, and were to bear ten per cent. interest per annum, payable semi-annually.

That the ordinance for said election was passed on the 22d of October, 1857.

That, in pursuance thereof, an election was held on the 2d of November, 1857, and the poll-books of said election were returned to the city council on the 4th of November, 1857, and the city council on that day decided that the number of votes for ratification was three hundred and sixteen, and the number against thirty-two votes, that being a large majority of the voters of said city voting at said election, ratifying said subscription.

And the city council, on the 1st of December, 1857, in compliance with said ratification, authorized the mayor to issue the bonds of the city to the Pike County Railroad, in accordance with calls on the capital stock made by the board of directors, and in pursuance of the ordinance of 22d of October, 1857.

The said city appointed agents to vote on its stock so subscribed, issued the bonds now sued by the plaintiff, has retained its stock and paid interest on said bonds up to the time of the falling due of the interest thereon included in this suit.

And the plaintiff hereto annexes, and makes a part of this petition, the records of the city council, setting out the ordinance under which said election was held, the copy of the poll-books returned, the

14 declared result of the election, the order to issue the bonds, the or-

der to appoint agents to vote on the stock, and the orders for the payment of interest, and makes the same a part of this petition. Wherefore he prays as in his said petition.

THOMAS FAUNTLEROY,
By GRANT & GRANT,
His Attorneys.

STATE OF IOWA,
Scott County, ss:

I, James Grant, being duly sworn, depose and say that I am one of plaintiff's attorneys herein; that I have read the foregoing amendment, and the statements thereof are true, as I verily believe.

JAMES GRANT.

Subscribed and sworn to by James Grant, this 23d day of September, 1878.

[SEAL.] WHITAKER M. GRANT,
Notary Public, Scott County, Iowa.

15 And afterwards, on the 4th day of April, 1879, the defendant filed its answer to petition, which is in words and figures following, to wit:

U. S. circ't court, east. dist. of Mo.

THOMAS FAUNTLEROY, PLAINTIFF, }
vs.
THE CITY OF HANNIBAL, DEFENDANT. }

By way of answer to the petition and the amendment thereto, the defendant states that the judgment first recited in said petition was obtained by consent merely, and was not had upon any issue affecting the validity of said bonds, and that the judgment secondly recited in said petition was obtained by default merely, and was not had upon any issue affecting the validity of said bonds.

Further answering, the said defendant denies that the city council decided that the number of votes for ratification of the subscription to the stock of the Pike County Railroad was three hundred and sixteen, and the number against, thirty-two; and denies that the said number was a large or other majority of the voters voting at said election in ratification of said subscription. The defendant denies that the order to issue the bonds was in compliance with any ratification of the subscription, and denies that the subscription to stock in the Pike
16 County Railroad was ever in any manner ratified as required by the statute for such case provided. And the defendant states, that while it is true, as alleged, that stock in the Pike County Railroad was issued to defendant, yet such stock was then, has ever since been, and now is, utterly valueless and without benefit to defendant.

J. M. & C. H. KRUM,
For Defendant.

And afterward, on said 4th day of April, 1879, the plaintiff filed his replication; which is in words and figures following, to wit:

In the circuit court of the United States for the eastern district of Missouri.

THOMAS FAUNTLEROY
vs.
THE CITY OF HANNIBAL.

Now comes the plaintiff herein and, for reply to the answer of said defendant to plaintiff's amendment to his petition, denies each and every allegation of said answer.

GRANT & GRANT,
L. M. FISHER.

And afterwards, at the March term, 1879, of said circuit court,
17 the following proceedings were had in said , on the 11th day of April, 1879, to wit:

THOMAS FAUNTLEROY, PLAINTIFF,
vs.
CITY OF HANNIBAL, DEFENDANT.

Now come the parties, by their attorneys, the plaintiff, by Messrs. Grant & Grant and L. M. Fisher, and the defendant, by Messrs. J. M. and C. H. Krum, and this case being regularly called for trial, and both parties being ready, the same is submitted to the court for trial, without the intervention of a jury, upon the pleadings, proofs, and arguments of counsel; upon consideration whereof, and being fully advised in the premises, the court finds the issues for the plaintiff, and assesses his damages, by reason of the non-payment of the bonds and coupons issued by said defendant and described in the petition, in the sum of nine thousand four hundred and thirteen dollars and eighty-three cents ($9,413.83).

It is, therefore, considered by the court that the plaintiff, Thomas Fauntleroy, have and recover of said defendant, The City of Hannibal, as well the said sum of nine thousand four hundred and thirteen dollars and eighty-three cents, the damages aforesaid by the court assessed, as also the costs herein expended, and have thereof execution.

MEMO.—$2,799.80 of this judgment bears 6 % per annum; $6,614.03 bears 10 %.

18 And afterwards, at said March term, and on the 18' day of April, the following further proceedings were had in said case:

THOMAS FAUNTLEROY, PLAINTIFF,
vs.
CITY OF HANNIBAL, DEFENDANT.

Now comes the plaintiff, by his attorneys, and files a motion that the liquidation of the final judgment in this case be amended so that the calculation of interest upon the coupons sued on, and on the judgment, shall be as follows, conformably to the petition: 1st. Upon the coupons at the rate of seven per cent. per annum from maturity to date of the judgment. 2nd. Upon so much of the judgment as relates to the coupons and their accrued interest, at the rate of seven per cent. per annum. And the court having considered said motion, orders that the same be overruled, and thereupon said plaintiff presents to the court

his bill of exceptions, which is allowed, signed, and ordered to be made a part of the record herein.

And on said 18th day of April, at said March term of said court, the following further proceedings were had in said case, to wit:

THOMAS FAUNTLEROY, PLAINTIFF,
vs.
CITY OF HANNIBAL, DEFENDANT.

Now come the parties, by their attorneys, and the court having considered the motion of defendant for a new trial, orders that said motion be overruled; and thereupon said defendant, by its attorneys, presents to the court its bill of exceptions, which is allowed, signed, and ordered to be filed, and made part of the record herein; and also presents to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation citing and admonishing the said plaintiff to be and appear at a Supreme Court of the United States, at the next term thereof, on the second Monday of October next, which said writ of error is allowed, and said citation signed by the judge.

And afterwards, at said March term, 1879, of said court, and on the 19th day of April, the following further proceedings were had in said case, to wit:

THOMAS FAUNTLEROY, PLAINTIFF,
vs.
CITY OF HANNIBAL, DEFENDANT.

Now comes the defendant, by its attorneys, and presents to the court its bond in the penal sum of nineteen thousand dollars, which is approved and ordered to be filed; and on motion of said attorneys it is ordered that a supersedeas be awarded staying further pro-
20 ceedings on the judgment heretofore rendered herein.

And the said bill of exceptions of the plaintiff, so allowed and filed as aforesaid, is in words and figures following, to wit:

In the circuit court of the United States for the eastern district of Missouri.

THOMAS FAUNTLEROY, PLAINTIFF,
vs.
THE CITY OF HANNIBAL, DEFENDANT.

Be it remembered that at the term whereat above case was tried and final judgment was rendered plaintiff moved the court as follows:

In the circuit court of the United States for the eastern district of Missouri.

THOMAS FAUNTLEROY
vs.
CITY OF HANNIBAL.

Plaintiff moves the court that the liquidation of the final judgment

in this case be amended so that the calculation of interest upon the coupons sued on, and on the judgment, shall be as follows, conformably to the petition:

1st. Upon the coupons at the rate of seven per cent. per annum from maturity to date of the judgment.

21 2d. Upon so much of the judgment as relates to the coupons and their accrued interest at the rate of seven per cent. per annum.

GRANT & GRANT,
JOSEPH SHIPPEN,
Pl'ff's Att'ys.

Which being seen and heard by the court was overruled, and the interest was ordered to remain as formerly calculated, at the rate of six per cent. per annum upon the coupons, and the judgment thereon to bear the same rate.

And the plaintiff then and there excepted; and that the said matters may become of record in said cause, the plaintiff tenders this bill of exceptions, and prays that the same may be signed; which is accordingly done.

SAMUEL TREAT, *Judge.*

And the said bill of exceptions of the defendant, so allowed as aforesaid, is in the words and figures following, to wit:

In the circuit court of the United States for the eastern district of Missouri.

22 THOMAS FAUNTLEROY, PLAINTIFF,
vs.
THE CITY OF HANNIBAL, DEFENDANT.

Be it remembered that at the trial of the above-entitled cause the plaintiff offered in evidence the bond and coupons sued on.

No. .] STATE OF MISSOURI. [$1,000.

Bond of the city of Hannibal, issued to pay calls on subscription for stock in the Pike County Railroad, Illinois.

Twenty years after date, The City of Hannibal promises to pay to the order of A. O. Nash, auditor of said city, or bearer, at the American Exchange Bank, New York, one thousand dollars, for value received, without defalcation, with interest on the same at the rate of ten per cent. per annum, and payable semi-annually at the same place, that is to say, fifty dollars on the first day of October, and a like sum on the first day of April in each year, upon the presentation of the coupons severally hereto annexed, until the payment is well and truly made of the said principal sum of one thousand dollars.

In witness whereof I, the mayor of said city, hereto subscribe my name and cause the seal of said city to be affixed, and the au-

23 ditor of said city countersigned the same at the city aforesaid, this first day of April, A. D. 1858.

[SEAL.] GEO. W. SHIELDS, *Mayor.*

A. O. NASH, *Auditor.*

Coupon.

$50.]

Cashier of the American Exchange Bank, New York, pay the bearer fifty dollars on the first day of October, 1874, for one-half year's interest on bond issued by the city of Hannibal in aid of the construction of the Pike County Railroad, Illinois.

33, B. 6.

A. O. NASH, *Auditor.*

(All the bonds and coupons mentioned in petition are the same, except as to numbers.)

Also the poll-books at an election held November 2d, 1857.

24 STATE OF MISSOURI,
County of Marion, City of Hannibal:

Joel H. Harris and James M. Morris, being duly sworn, upon their oaths say that they will faithfully and impartially, to the best of their ability, discharge the duties of judges of an election to be held this day, in the first ward, at Thomas S. Miller's lumber-yard office, in said first ward, in the city of Hannibal, for the purpose of electing city officers for the ensuing year, according to law, and for the ratification of the subscription of one hundred thousand dollars of stock in Pike County Railroad.

J. H. HARRIS.
JAS. M. MORRIS.

Subscribed and sworn to before me this 2d of November, 1857.

A. O. NASH,
Justice of the Peace.

STATE OF MISSOURI,
County of Marion, City of Hannibal:

C. C. Brady and H. Ruffner, being duly sworn, upon their oaths say that they will faithfully and impartially, to the best of their ability, perform the duties required of them as clerks of the election to be held this day in the first ward, in said city, for the purpose of
25 electing city officers for the ensuing year, and for the ratification of the subscription of one hundred thousand dollars of stock in Pike County Railroad.

C. C. BRADY.
H. RUFFNER.

Subscribed and sworn to before me this 2d of November, 1857.

A. O. NASH,
Justice of the Peace.

Poll-books of an election begun and held at Thomas S. Miller's lumber-yard, in the first ward, in the city of Hannibal, county of Marion, and State of Missouri, on the first Monday (the 2d day) of November, A. D. 1857, for the purpose of electing a mayor, marshal, recorder, and attorney for said city, three councilmen for said ward, and for the ratification of the subscription of one hundred thousand dollars of stock in the Pike County Railroad, when the following persons voted as follows:

No.	Ratification. Names of voters.	For.	Ag'st.
1	T. B. Lorance	1	....
2	Patrick I. Wills	1	....
3	Robert Harris	1	....
4	Nathaniel Dick	1	....
5	Daniel Harris	1	....
6	J. Matthews, (sworn)	....	1
7	R. E. Green	....	1
8	John Morris	1	....
9	Benj. Mitchell	1	....
10	J. Jordan	....	....
11	M. Strong	....	....
12	Charles Humphrey	....	....
13	D. Morris	1	....
14	L. Butler	1	....
15	Benj. Buckler (rej't'd)	....	....
16	N. N. Davis	1	....
17	Wm. R. Loop	....	1
18	J. H. Ashford	1	....
19	D. Fisher	....	....
20	John McAllie	1	....
21	N. M. Morris	1	....
22	T. Neville	....	1
23	F. B. McElroy	1	....
24	Lewis Cook	1	....
25	Wm. Shoot	1	....
26	H. W. Morris	1	....
27	Henry Mitchell	1	....
28	D. P. Harris	1	....
29	John Munch	1	....
30	Freeman Pangborn	....	....
31	Kelan Moss	....	....
32	A. R. Seal	1	....
33	H. Kornden	1	....
34	F. Kahl	1	....
35	D. M. White	1	....
36	Daniel Murphy	1	....
37	Robert Dickison	1	....
38	Michael Mandeu	1	....
39	Henry Ruch (sworn)	1	....
40	Thos. Callahan	1	....
41	M. F. Brown	1	....
42	A. S. Robards	1	....
26			
43	W. R. Pitts	1	....
44	J. B. Hehn	1	....
45	Wm. Eddy	1	....
46	J. M. Armstrong	....	1
47	G. Lookingbill	1	....
48	Henry Sims	1	....
49	Jas. A. Beard	1	....
50	James Racklifte	1	....
51	John Gallagher	1	....
52	Robert A. Arthur	1	....
53	Arthur McAnully	1	....
54	Eugene O'Brieu	1	....
55	F. W. Wood	1	....
56	Francis McNeilie	1	....
57	Jeremiah Heffener	1	....
58	Thos. Jackson	1	....
59	John F. Herzchong	1	....
60	H. W. Crosby	1	....
61	A. J. Settles	1	....
62	Jno. C. B. Anderson	1	....
63	D. J. Garth	....	1
64	W. O. Simmons	1	....
65	Geo. Hoffner	1	....
66	E. C. McDonald	1	....
67	Wm. McDaniel	1	....
68	James McIntyre	1	....
69	Jacob Coffman	1	....
70	J. G. Toncrey	1	....
71	John Livering	1	....
72	L. Holden	....	1
73	Peter Cramer	....	1
74	C. T. Helm	1	....
75	Geo. Bronn	1	....
76	E. H Turner	1	....
77	J. R. Shockley	....	....
78	Abram Curts	1	....
79	Andrew Woolcat	1	....
80	James Stewart	....	....
81	A B. McDonald	1	....

No.	Ratification. Names of voters.	For.	Ag'st.
82	P. P. Milligan	1	....
83	Geo. B. Pogue	1	....
84	S. M. Carter	1	....
85	Wm. Waite	....	1
86	J. O. Pollard	1	....
87	B. N. Crumb	1	....
88	R. Hulse	1	....
89	James Phillips	....	....
90	A. D. Huser	1	....
91	J. Pierce	....	1
92	C. B. Johnson	1	....
93	T. J. Pickering	1	....
94	Wm. W. Davis	....	1
95	A. C. Cross	....	....
96	Lewis Weinel	1	....
97	C. L. Bounds	....	....
98	Geo. Hawes	....	1
99	Francis Huser	....	1
100	J. C. Helm	1	....
101	Thos. Hart	1	....
102	Henry McCloskey	1	....
103	Jno. Osborne	1	....
104	J. J. Cruckshank	....	....
105	Conrad Peck	1	....
106	Wm. Gott	1	....
107	Robert Q. Ruffner	1	....
108	Thos. Lucas	1	....
109	D. L. Haffner	1	....
110	Daniel Conner	1	....
111	Peter Brady (sworn)	1	....
112	Edward Duffner	1	....
113	John S. Craig	....	1
114	M. H. Furgerson	1	....
115	Jas. Conway	1	....
116	M. Schanbacker	1	....
117	B. F. Harris	....	1
118	Thos. T. McAffee	....	....
119	Henry Hulse	1	....
120	Thos. Short (rej't'd)	....	....
121	R. D. Honeyman	....	1
122	James Brady	....	1
123	Chas. W. Turpin	....	1
124	Wm. Robbins	1	....
125	Robert Mess	1	....
126	H. H. Wardlaw	1	....
27			
127	James Murphy	1	....
128	O. R. Phelps	1	....
129	David Schneider	1	....
130	J. W. Teichman	1	....
131	H. Ruffner	1	....
132	R. Struble	1	....
133	B. H. McCann	1	....
134	Jas. M. Morris	1	....
135	S. H. Anderson	1	....
136	L. T. Brittinghan	1	....
137	Charles Snider	1	....
138	J. W. Brady	1	....
139	Henry Webb	1	....
140	R. D. Brewington	1	....
141	M. O. Donald (rej't'd)	....	....
142	John Leonard	1	....
143	C. Smithe	1	....
144	Lee Elgin	1	....
145	J. H. Harris	....	....
146	C. C. Brady	....	....
147	James T. Davis	1	....
148	Richard Lawless	1	....
149	Edwin Bowen	1	....
150	Jas. Dudding	1	....
151	S. R. Wilson	1	....
152	Wm. R. Kidd	1	....
153	Wm. Copp	1	....
154	Wm. Howke	1	....
155	A. Fuqua	1	....
156	Jacob Korkland	1	....
157	J. S. Stevenson	1	....
158	Philip McAnulty	....	....
159	L. Peal	1	....
160	M. Killian	....	....
161	Jno. C. Smithe	....	....

STATE OF MISSOURI,
County of Marion, City of Hannibal, ss:

The following is the result of the balloting at an election held on this day, at Thomas S. Miller's lumber-yard office, in the first ward of said city of Hannibal, for the purpose of electing city officers for said city, and for the ratification of the subscription of one hundred thousand dollars of stock in Pike County railroad, to wit:

For mayor:
Moses P. Green received thirty-six votes.
Geo. W. Shields received one hundred and eighteen votes.
For marshal:
J. J. Kirkland received sixty-four votes.
A. Curts received four votes.
R. La Man received seventy-eight votes.
For recorder:
H. H. Wardlaw received eighty-four votes.
John L. Lacy received sixty-eight votes.
28 For attorney:
E. C. McDonald received fifty-three votes.
Thos. A. Harris received ninety-three votes.
For councilmen:
C. L. Elgin received eighty-six votes.
Thos. Jackson received eighty-seven votes.
D. I. Garth received forty-four votes.
Wm. Waite received twenty-six votes.
D. Schneider received forty-four votes.
E. H. Turner received fifty-seven votes.
Geo. B. Pogue received fifty votes.
Silman received two votes.
Crumb received one vote.
Cruikshank received one vote.
J. B. Heber received six votes.
A. S. Robards received two votes.
J. Phillips received one vote.

For ratifying the subscription of $100,000 stock in Pike Co. Railroad:

In favor of the ratification, one hundred and twenty-two votes were cast.

Against the ratification of the subscription of $100,000 in the Pike Co. Railroad:

Against the ratification, eighteen votes were cast.

We, the undersigned, judges and clerks of the foregoing named election, held as aforesaid for the purpose aforesaid, do hereby certify that the within and foregoing lists of votes was this day cast in said ward, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of the same day, and that the aggregate number of votes for each person, and for the various officers, and for the ratification of the subscription of one hundred thousand dolllars for stock in Pike County Railroad was as aforesaid.

JOEL H. HARRIS,
JAS. M. MORRIS,
Judges.

C. C. BRADY,
H. RUFFNER,
Clerks.

29 STATE OF MISSOURI,
County of Marion, City of Hannibal:

Peter A. Saul and William Leer, being duly sworn, upon their oaths say that they will faithfully and impartially, to the best of their ability, discharge the duties of judges of an election to be held this day in the second ward, at Melpontian Hall, in said second ward, in the city of Hannibal, for the purpose of electing city officers for the ensuing year, according to law, and for the ratification of the subscription of one hundred thousand dollars of stock in Pike County Railroad.

P. A. SAUL.
WM. LEER.

Subscribed and sworn to before me this 2d day of November, 1857.
A. O. NASH,
Justice of the Peace.

STATE OF MISSOURI,
County of Marion, City of Hannibal:

George Davis and Wm. Parker, being duly sworn, upon their oaths say that they will faithfully and impartially, to the best of their ability, discharge the duties required of them as clerks of the election to be held this day in the second ward, in said city, for the purpose of electing city officers for the ensuing year, and for the ratification of the subscription of one hundred thousand dollars in the Pike County Railroad.

G. F. DAVIS.
W. L. PARKER.

Poll-books of an election began and held at Melpontian Hall, in the second ward, in the city of Hannibal, county of Marion, and State of Missouri, on the first Monday (the 2d day) of November, A. D. 1857, for the purpose of electing a mayor, marshal, recorder, and attorney for said city, three councilmen for said ward, and for the ratification of the subscription of one hundred thousand dollars of stock in the Pike County Railroad, when the following persons voted as follows:

30 Ratification.

No.	Names of voters.	For.	Ag'st.
1	John Long	1	
2	P. A. Saul	1	
3	Aug. Rhino	1	
4	T. S. Foster	1	
5	Wm. Leer	1	
6	G. F. Davis	1	
7	J. C. Waugh		1
8	G. F. McKey	1	
9	J. T. Hixon	1	
10	M. T. Winn	1	
11	J. F. Bull	1	
12	Frank Snider	1	
13	D. Long	1	
14	James Ashmore	1	
15	John Winn	1	
16	M. Phelan	1	
17	Chris. Goldner	1	
18	D. L. Russell	1	
19	J. P. Lincoln	1	
20	E. G. Hawkins		1
21	R. Long	1	
22	Daniel Grady	1	
23	Hiram McVeigh	1	
24	B. W. Horn	1	
25	James Burns		
26	James M. Walden		1
27	Samuel Weister		1
28	J. H. Peyton	1	
29	Daniel Keif	1	
30	Tim. Crowley		
31	Lin. Scattlin		
32	John Schein		
33	B. Stillwell		1
34	H. V. P. Draper		1
35	J. Schneider	1	
36	S. Levi	1	
37	L. B. Seaton		1
38	W. F. Kercheral		1
39	G. H. Robinson	1	
40	J. T. I. Milton	1	
41	H. W. Collins	1	
42	T. S. Hagan	1	
43	Robert Martin	1	
44	H. H. Jeffries	1	
45	M. P. Kunkel	1	
	Amount of voters, 90.		

Ratification.

No.	Names of voters.	For.	Ag'st.
46	G. P. Alger	1	
47	Frank Davis		1
48	C. Rush		
49	G. H. Bornbeck	1	
50	A. F. Bornbeck	1	
51	F. R. Milton	1	
52	J. Taney	1	
53	A. J. Lama		
54	James Powell	1	
55	Wm. N. Davis	1	
56	Mike Harney	1	
57	M. M. Barron	1	
58	Steve Herrick	1	
59	Wm. A. Benton	1	
60	George P. Ray	1	
61	Wm. A. Wilson	1	
62	John H. Powell	1	
63	Charles Robins	1	
64	J. B. Chesley	1	
65	A. O. Nash	1	
66	J. M. Stewart		
67	J. L. Lacy	1	
68	Thos. Brittingham		1
69	S. M. Moore	1	
70	David Van Pelt	1	
71	R. D. Lacy		
72	Isaac James	1	
73	John Pickens	1	
74	Thomas Brice	1	
75	J. P. Richards	1	
76	R. Lamar	1	
77	J. B. Brookes	1	
78	Uriah McKey	1	
79	Jacob Risly	1	
80	George K. Lewis	1	
81	J. S. Brittingham		
82	Thomas K. Collins	1	
83	31 Thomas Smashey		
84	T. B. Lewis	1	
85	W. G. Dalton	1	
86	James Schuebley	1	
87	James E. Marnell	1	
88	David Borrowman	1	
89	G. W. Morgan	1	
90	Wm. Marsh	1	

STATE OF MISSOURI,

County of Marion, City of Han'ibal, ss:

The following is the result of the balloting at an election held on this day at Melpontian Hall, in the second ward, in said city of Hannibal, for the purpose of electing city officers for said city, for the ratification of the subscription of one hundred thousand dollars of stock in the Pike County Railroad, to wit:

For mayor: Moses P. Green received eighteen (18) votes; G. W. Shields received sixty-nine (69) votes.

For ma'shal: Richard Lamar received fifty (50) votes; J. J. Kirklin received thirty-seven (37) votes.

For recorder: J. L. Lacy received forty-two (42)votes; H. H. Wardlaw received forty-four (44) votes.

For city attorney: Thomas A. Harris received sixty (60) votes; E. C. McDonald received twenty-six (26) votes; W. H. Hatch received one (1) vote.

For councilmen: F. Schneider received thirty-three (33) votes; B. H. Hixin received fifty-three (53) votes; H. Jourdan received sixty (60)

votes; R. F. Lakenan received sixteen (16) votes; W. G. Daul-
32 ton received thirty-five (35) votes; W. R. Davis received seven (7) votes; T. Hagan received one (1) vote; James Patterson received one (1) vote; M. P. Kunkel received eight (8) votes; Wm. Marsh received three (3) votes; David Long received three (3) votes.

In favor of ratification of the subscription of one hundred thousand dollars of stock in the Pike County Railroad, to wit, sixty-nine (69) votes.

Against ratification of the subscription of one hundred thousand dollars of stock in the Pike County Railroad, ten (10) votes.

We, the undersigned, judges and clerks of the within and foregoing election, held as aforesaid, and for the purposes aforesaid, do hereby certify that the within and foregoing lists of votes was this day cast in said ward, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of the same day, and that the aggregate number of votes for each person and for the offices, and for the ratification of the subscription of one hundred thousand dollars of stock in the Pike County Railroad, was as aforesaid.

P. A. SAUL,
WM. LEER,
Judges.

G. F. DAVIS,
W. L. N. PARKER,
Clerks.

STATE OF MISSOURI,
County of Marion, City of Hannibal:

Joel Ledford and Samuel Marmaduke, being duly sworn, upon their oaths say that they will faithfully and impartially, to the best of their ability, discharge the duties of judges of an election to be held this day in the third ward, at the city-hall, over the market-house in said third ward, in the city of Hannibal, for the purpose of electing city officers for the ensuing year, according to law, and for the ratification of the subscription of one hundred thousand dollars of stock in the Pike County Railroad.

JOEL BEDFORD.
SAMUEL MARMADUKE.

Subscribed and sworn to before me this 2d of November, 1857.

A. O. NASH,
Justice of the Peace.

33 STATE OF MISSOURI,
County of Marion, City of Hannibal:

David Dean and James McDaniel, being duly sworn, upon their oaths say that they will faithfully and impartially, to the best of their ability, perform the duties required of them as clerks of the election to be held in the third ward in said city for the purpose of electing city officers for the ensuing year, and for the ratification of the subscription of one hundred thousand dollars of stock in the Pike County Railroad.

DAVID DEAN.
J. W. McDANIEL.

Subscribed and sworn before me this 2d day of November, 1857.

A. O. NASH,
Justice of the Peace.

Poll-books for an election began and held at the city-hall, over the market-house in the third ward, in the city of Hannibal, county of Marion and State of Missouri, on the first Monday (the 2d day) of November, 1857, for the purpose of electing a mayor, marshal, recorder, an attorney for said city, three councilmen for said ward, and for the ratification of the subscription of one hundred thousand dollars of stock in the Pike County Railroad, when the following persons voted as follows:

No.	Ratification. Names of voters.	For.	Ag'st.
1	A. B. Cohen	1	
2	R. Bridgeford	1	
3	Joseph Schulter	1	
4	A. P. Foreman	1	
5	Charles P. Woolsey	1	
6	James Wait	1	
7	Z. A. Saunders	1	
8	R. A. Cohen	1	
9	Wm. Fenner	1	
10	Jesse Robinson	1	
11	D. M. Manning	1	
12	D. M. Manning	1	
13	Thomas Brazell	1	
14	George Holmes	1	
15	M. P. Green	1	
16	Charles L. Lowrie	1	
17	G. L. Hewitt	1	
18	Abraham Murphy	1	
19	J. T. Smith	1	
20	John Roberts	1	
21	John Conlon		1
22	George R. Perkins	1	
23	J. H. Patterson	1	
24	C. A. Alguire	1	
25	Van E. Hale	1	
26	O. E. Davis	1	
27	W. O. Cross	1	
28	T. Trumbo	1	
34		1	
29	J. C. Morris		
30	Lambert McLain	1	
31	Patrick McNailus	1	
32	John DeGarris	1	
33	John H. Brown		1
34	Philip McNailus	1	
35	W. F. Dodge	1	
36	Sol. Ashmore	1	
37	John P. Smith	1	
38	Samuel Shields		
39	Selby Raima	1	
40	H. F. Turner	1	
41	Peter Ballett	1	
42	Wm. Morgan	1	
43	Daniel McGee	1	
44	W. H. Rector	1	
45	G. W. Caplinger	1	
46	Thomas Cohen	1	
47	A. P. Bird	1	
48	Gardiner Schultz	1	
49	Turner Hayden	1	
50	John T. Daulton	1	
51	J. Kilmartin	1	
52	Thomas Cohe	1	
53	H. Meredith	1	
54	Wesley Batner	1	
55	J. P. Pitts	1	
56	Eugene Lacraft	1	
57	G. W. Priest	1	
58	John J. Campbell	1	
59	Wm. Roberts	1	
60	Jerry Carroll	1	
61	J. P. Miller	1	
62	W. Elliott	1	
63	P. A. Heckman	1	
64	J. McNalis	1	
65	Simon Brady	1	
66	David Buneh	1	
67	S. Donehewer	1	
68	H. C. Buchanan	1	
69	D. T. Morton	1	

No.	Ratification. Names of voters.	For.	Ag'st.
70	Wm. Collins		
71	John Able	1	
72	P. Washendorfer	1	
73	R. B. Thompson		1
74	W. Hollingsworth	1	
75	E. A. Lockwood	1	
76	Robert Ferguson	1	
77	A. Vanderment	1	
78	J. W. Crigmire	1	
79	N. Glascock	1	
80	Thomas Able	1	
81	B. T. Norton	1	
82	J. D. Dowling	1	
83	G. W. Shields	1	
84	C. D. Bouram	1	
85	Armstrong Dawson	1	
86	Henry Howard	1	
87	J. B. Brown	1	
88	Jas. Dennigan (rej'd)	1	
89	Wm. Parker		
90	G. Potter		
91	Wm. Smith	1	
92	S. J. McAtee	1	
93	R. Fitzpatric	1	
94	Al. Ingraham	1	
95	Dedrick Hoss	1	
96	F. Waller	1	
97	Chris. Schroder	1	
98	John Combs	1	
99	John O'Herrin	1	
100	Sidney Hayden	1	
101	Samuel McGee	1	
102	Samuel Coleman	1	
103	Wm. Holmes	1	
104	James A. Munson		1
105	James Cook	1	
106	Charles Curts	1	
107	Robt. Blackwood	1	
108	Wm. Robinson	1	
109	H. L. Hickman	1	
110	E. M. Stocklin	1	
111	Theodore Jones	1	
112	John Doyle	1	
35			
113	J. N. Peyton		
114	Milton Boggs	1	
115	Ransom Thomas		
116	J. R. McGee	1	
117	L. Mifford	1	
118			
119	R. E. Coontz		
120	T. B. Brazil	1	
121	J. A. Johnson	1	
122	James Conner	1	
123	Thomas Doyle	1	
124	Thos. C. Spackman	1	
125	J. H. McGee	1	
126	S. S. Allen	1	
127	J. B. Brittingham	1	
128	Jesse Wright	1	
129	R. B. Runman	1	
130	Samuel Richards		
131	D. Dean	1	
132	J. W. McDaniel	1	
133	T. A. Harris	1	
134	S. D. Marmaduke	1	
135	Joel Ledford	1	
136	Thos. Wood	1	
137	P. Hatzman	1	

STATE OF MISSOURI,
County of Marion, City of Hannibal, ss:

The following is the result of the balloting at an election held on this day, at the city-hall, over the market-house, in the third ward of said city of Hannibal, for the purpose of electing city officers for said city, and for the ratification of the subscription of one hundred thousand dollars of stock in Pike County Railroad, to wit:

For mayor:
Moses P. Green received twenty-eight votes.
George W. Shields received one hundred and four votes.
For marshal:
J. J. Kirkland received fifty-seven votes.
Richard La Mar received seventy-two votes.
Abraham Curts received three votes.
For recorder:
H. H. Wardlaw received fifty-two votes.
John L. Lacy received eighty-one votes.
For city attorney:
Thomas A. Harris received eighty-seven votes.
E. C. McDonald received forty-three votes.
36 For Councilmen:
John D. Dowling received ninety-three votes.
Charles Curts received eighty-three votes.
R. E. Coontz received eighty-five votes.
R. B. Thompson received seventeen votes.
Armstrong Dawson received twenty-two votes.
Thomas Cohen received forty votes.
William Baird received twelve votes.
For ratifying the subscription of $100,000 stock in Pike Co. Railroad:
For the ratification, one hundred and twenty-five votes.
Against the ratification of the subscription of $100,000 in the Pike Co. Railroad:
Against the ratification, four (4) votes.

We, the undersigned, judges and clerks of the foregoing-named election, held as aforesaid, for the purpose as aforesaid, do hereby certify that the within and foregoing list of votes was this day cast in said ward, between the hours of nine o'clock in the forenoon and six o'clock in the afternoon of the same day, and that the aggregate number of votes for each person, and for the various officers, and for the ratification of the subscription of one hundred thousand dollars of stock in the Pike County Railroad, was as aforesaid.

JOEL LEDFORD,
SAMUEL MARMADUKE,
Judges.

DAVID DEAN,
J. W. McDANIEL,
Clerks.

STATE OF MISSOURI,
County of Marion, City of Hannibal, ss:

I, William E. Forman, city clerk of the city of Hannibal, a municipal corporation, duly organized and existing under the laws of the State of Missouri, hereby certify that the above, foregoing, and hereto attached pages comprise, are, and constitute a full, true, complete, and perfect copy of the original poll-books of the city election held in the city

of Hannibal on November 2, 1857, together with the original returns of said election, as fully as the same all appear and remain on file and of record in my office, the office of the city clerk of said city of Hannibal.

37 In witness whereof I hereunto set my hand and official signature, and hereto affix the common seal of said city of Hannibal, under and by virtue of section 29, Article V, of the consolidated city charter of said city. Done at said office this 28th day of August, 1878.

[SEAL.] WILLIAM E. FORMAN,
City Clerk of the City of Hannibal.

Also, an ordinance of the city of Hannibal, approved October 22, 1857, as follows:

38 At a called meeting of the city council of the city of Hannibal, held on the 22d day of October, 1857, among other entries of record, the following is to be found:

The mayor stated the call of the council was to consider whether it would take action in relation to taking stock in the Pike County, Illinois, Railroad.

Mr. Shields offered an ordinance entitled "An ordinance authorizing and directing the subscription of one hundred thousand dollars stock in the Pike County Railroad," which was read a first time for information; and, on motion, the rule was suspended, and the ordinance was placed on its second reading, by sections, for corrections and amendments. Having been read by sections, corrected, and amended, passed, and on motion was placed on its third and final passage. Mr. Garth called the ayes and noes. Ayes: Shields, Curts, Peyton, McDaniel, Parker, Snider, 6; noes: Garth, 1; and on motion the ordinance was declared passed, and ordered to the mayor:

An ordinance authorizing and directing the subscription of one hundred thousand dollars stock in the Pike County Railroad.

"Be it ordained by the city council of the city of Hannibal, as follows:

"SECTION 1. That the mayor of the city of Hannibal be, and is hereby, authorized and directed to subscribe for, and take for the city of Hannibal, one hundred thousand dollars stock in the Pike County Railroad, having its western terminus on the bank of the

39 Mississippi River, at a point in the State of Illinois opposite the city of Hannibal, within a one-half mile of the western terminus of the Suy Carty Plank Road; said stock to be paid for in the bonds of the city of Hannibal, at their par value, which bonds are to be made payable not exceeding twenty years from the date of their issue, and are to bear ten per cent. interest per annum, payable semi-annually.

"SECTION 2. That the mayor be, and is hereby, directed to cause a poll to be opened in said city of Hannibal, for the purpose of obtaining the ratification of the foregoing said subscription of one hundred thousand dollars stock in said Pike County Railroad by the tax-payers of said city of Hannibal, in accordance with the provisions contained in the third section of an act passed by the general assembly of the State of Missouri, entitled 'An act to amend the charter of the city of Hannibal,' approved February 27th, 1857.

"SECTION 3. This ordinance to take effect from and after its passage. Approved October 22d, 1857."

Also, an entry from the records of the proceedings of the city council of the city of Hannibal, dated November 4, 1857, as follows:

At a called meeting of the city council of the city of Hannibal, held on the 4th day of November, 1857, among other entries of record, the following is to be found:

"The clerk read to the city council the certificate of the mayor, and our judge of election from each ward in the city, whereby it was shown to the satisfaction of the council that at the municipal election held in the several wards in the city on Monday, the 2d day of November, 1857, George W. Shields was duly elected for the office of mayor; John L. Lacy, for the office of city recorder; Richard LaMar, for the office of city marshal; Thomas A. Harris, for the office of city attorney; C. L. Elgin, Thomas Jackson, and E. H. Turner, for city councilmen of the first ward; B. F. Hixon, H. Jordan, and William G. Daulton, for city councilmen for the second ward; John D. Dowling, R. E. Coontz, and Charles Curts, for city councilmen for the third ward; and thereupon, on motion of McDaniel, it was resolved by the city council that certificates under the seal of the city, signed by the mayor and countersigned by the clerk, be made out and delivered, so soon as may be, to each one of the officers-elect above named."

All of which was passed by the council.

For ratification, three hundred and sixteen votes; against, thirty-two votes.

Also, an entry from same records, dated December 7, 1857:

At a regular meeting of the city council of the city of Hannibal, held on the 7th day of December, 1857, among other entries of record, the following is to be found:

"On motion of Mr. Dowling, resolved that the mayor be, and he is hereby, authorized and instructed to issue the bonds of the city to the Pike County Railroad, in accordance with calls on the capital stock made by order of the board of directors, and in pursuance of an ordinance approved October 22d, 1857. Passed."

Also, an entry from same, dated April 12th, 1858.

At an adjourned meeting of the city council of the city of Hannibal, held on the 12th day of April, 1858, among other entries of record, the following is to be found:

"On motion Mr. Dowling, resolved that the mayor appoint an agent to cast the vote of the city at the next election for directors for Pike County Railroad; which was passed."

Also, an ordinance approved May 23, 1859:

Also, at an adjourned meeting of the city council of the city of Hannibal, held on the 23d day of May, 1859, among other entries of record, the following is to be found:

Mr. Hixon introduced the following ordinance, which was passed:

"An ordinance in relation to revenue.

"Be it resolved by the city council of the city of Hannibal, as follows:

"SECTION 1. For the support of the city government, payment of the city debts, and improvement of the city, a tax of one per centum upon all property within the limits of this city made taxable by law for State purposes, and a poll-tax of one dollar upon all free white male persons

over twenty-one years of age who shall have resided within the city six months, shall be levied for 1859.

"SEC. 2. This ordinance to be in force from and after its passage."

41 Also, an ordinance approved June 25th, 1859, viz:

Also, at a called meeting of the city council of the city of Hannibal, held on June 17th, 1859, among other entries of record, the following is to be found:

"An ordinance entitled an ordinance giving aid to the Pike County Railroad Company.

"And whereas the city of Hannibal, in the State of Missouri, is a large stockholder in said Pike County Railroad, and it is required and expected that she, as such, will desire to protect her interests as such, by assuming, in her corporate capacity, a moiety of the liability incurred by the aforesaid individuals:

"Therefore, be it ordained by the city council of the city of Hannibal, as follows:

"SECTION 1. That the city of Hannibal, in her corporate capacity, shall, together with the parties before named, became liable to the party before named for one-half of all the loss sustained by reason of their executing the guarantee above copied in this preamble, and now referred to as a part of this ordinance; provided, however, that the portion of the loss guaranteed by the city shall in no event exceed twenty thousand dollars, and that the revenues of the city shall be pledged for the payment of the same.

"SEC. 2. That to secure and bind the city to pay their moiety of this loss, if any shall hereafter arise on this covenant, this preamble and ordinance is now duly spread on the records of the city, and is ordered to be signed, sealed, and delivered, in due form, by the mayor and clerk.

"SEC. 3. This ordinance to be in force from and after its passage. Approved June 25th, 1859."

Also, the resolutions and orders of the city of Hannibal, of different dates, viz:

At a regular monthly meeting of the city council of the city of Hannibal, held March 12th, 1860, among other entries of record, the following is to be found:

"The mayor thereupon called the attention of the council to the subjects following, to wit:

"1. The necessity of making some provision for the interest due in New York City on our bonds on the 1st day of April next."

42 At a regular meeting of the city council of the city of Hannibal, held May 13th, 1861, among other entries of record, the following is to be found:

"The following resolution was offered by Mr. League, and, on motion, which prevailed, was adopted:

"Resolved by the city council of the city of Hannibal that George W. Shields be and is hereby authorized and empowered to cast the vote of the city of Hannibal for directors in the Pike County Railroad Company at the ensuing annual election on the first Monday in June next; and that the mayor be authorized to issue a certificate to George W. Shields to that effect and attach the seal of the city thereto."

Also, at an adjourned meeting of the city council of the city of Hannibal, held on December 23d, 1861, among other entries of record, the following is to be found:

"Mr. Caton moved that a committee of three be appointed, to which should be added the mayor and city attorney, to confer with the collector in regard to receiving coupons in payment of city taxes. The question being stated, his honor called Mr. Shields to the chair, and addressed a few pertinent remarks to the council. After some further discussion the motion was carried, and his honor appointed Messes. Mills, Brewington, and McDaniel as said committee."

Also, at an adjourned meeting of the city council of the city of Hannibal, held on February 4th, 1862, among other entries of record, the following is to be found:

"Committee on coupons presented the following report, which, on motion, was received, ordered to file, committee discharged, and the resolution embodied in said report adopted:

"To the city council of the city of Hannibal, February 3, 1862:

"The committee, R. D. Brewington, C. Mills, Wm. McDaniel, S. S. Allen, and M. P. Green, who were appointed to inquire into the expediency of authorizing the collector to receive coupons now due in pay
ment for taxes, would report as follows:
43 "That, in the opinion of the committee, to give such authority, with certain limitations, would be just and expedient. The delinquent tax-list is large and money is very scarce and hard to get, and every facility should be offered to induce the payment of taxes that is just and proper. We cannot justly decline to receive in payment of taxes the obligations of the city to which there is no valid legal objection. We would therefore recommend to the council that they pass the following resolution, to wit:

"Resolved, That the collector of the city, from and after this date, and until otherwise directed by resolution of this council, or in writing by the mayor, be, and he is hereby, instructed and authorized to receive in payment of taxes due the city any coupons now due or past due; provided, however, that the bonds to which said coupons belong, together with said coupons, are held bona fide as the property of the person who proposes to pay the same for taxes, and were so held by said person at the date of the passage of this resolution.

"Resolved, further, That any resident tax-payer in this city who, at the date of the passage of this resolution, is the bona fide holder of coupons due by this city, and now due or past due, for value, may pay the same on account of any tax he may owe the city, in whole or in part; provided, however, he will make affidavit before the collector that he is such bona fide holder, and was such at the time of the passage of this resolution.

"Resolved, further, That the instructions and privileges here given shall apply only to tax accounts or lists now in the hands of the collector, they being for the taxes yet unpaid for 1860 and 1861, and shall not be understood to apply to the taxes to be assessed for 1862, unless so hereafter declared by resolution of this council.

"Resolved, That all persons offering to pay their taxes as aforesaid, in coupons, shall be required to satisfy the collector that he or she is the bona fide holder thereof, as provided in the foregoing resolutions, by affidavit to that effect before said collector receives said coupons in payment of taxes.

"Resolved, further, That said collector shall, on or before the last day in each month, have all the coupons he may receive during
44 the audited, and procure a warrant therefor, deliver-

ing the coupons to the auditor for cancellation, and thereupon the auditor shall return said coupons each month with his report of the same to the council, and the coupons shall thereupon be destroyed.

"The committee having fully reported, they ask to be discharged.

"R. D. BREWINGTON, *Chairman.*"

Also, at a called meeting of the city council of the city of Hannibal, held May 27, 1862, among other entries of record, the following is to be found:

"Upon motion of Mr. McDaniel, Mr. B. N. Crump was delegated to cast the vote of the city at the meeting of the stockholders of the Pike County Railroad, to be held at Barry, Illinois, on the 4th day of June, 1862."

Also, at an adjourned meeting of the city council *council* of the city of Hannibal, held August 9th, 1862, among other entries of record, the following is to be found:

"Mr. Green brought up the question of taking coupons due and past due in payment of taxes for 1862. On motion of Mr. Mills, the matter was referred to the committee on finance."

Also, at a regular monthly meeting of the city council of the city of Hannibal, held September 1st, 1862, among other entries of record, the following is to be found:

"The finance committee, to whom was referred the matter of taking coupons for taxes for 1862, reported verbally, recommending that the same instructions be given the present collector as were given the old collector by resolution passed February 4th, page 113, record. The report was received and the collector so instructed."

Also, at an adjourned meeting of the city council of the city of Hannibal, held September 10th, 1862, among other entries of record, the following is to be found:

45 "*Auditor's report on coupons.*

"Coupon 8, bond 1, held by John B. Helm, and by him paid in for taxes for 1861, accompanied by his affidavit, in accordance with resolution of council, February 4, 1862.

(Signed) "M. L. PIERSON,
"*Auditor, C. H.*"

Also, at a regular monthly meeting of the city council of the city of Hannibal, held on the 3d November, 1862, among other entries of record, the following is to be found:

"6th. Auditor's report of coupons taken in payment of taxes for 1862, amounting in the aggregate to $107.00.

(Signed) "M. L. PIERSON, *Auditor.*"

Also, an adjourned meeting of the city council of the city of Hannibal, held November 8th, 1862, among other entries of record, the following is to be found:

"The auditor reported coupons taken for taxes by Mr. LaMar from October 1st to date, amounting to $180.00, cancelled by warrants 705, 706, 707, 772, and 778. The report was received and ordered to be filed."

STATE OF MISSOURI,
County of Marion, City of Hannibal, ss:

I, William E. Foreman, clerk of the city of Hannibal, a municipal corporation organized and existing under the laws of the State of Missouri, hereby certify that the above, foregoing, and hereto attached pages comprise, are, and constitute a full, true, and complete and perfect copy of the proceedings of council had in the matter of Pike County Railroad, as the same appear of record in my office, the office of the city clerk of said city of Hannibal.

In testimony whereof I hereto set my hand and official signature, and hereto affix the common seal of said city of Hannibal, under and
46 by virtue of section 29, article 5, of the consolidated city charter of said city. Done at said office this 17th day September, 1878.

[SEAL.] WILLIAM E. FOREMAN,
City Clerk.

47 (To all of which evidence the defendant objected, on the ground that it was incompetent and irrelevant, and that the petition and amended petition did not state facts sufficient to constitute a cause of action; but the court overruled and admitted the said evidence, and the defendant at the time duly excepted.)

It was then admitted by said plaintiff that the stock held by said defendant in the Pike County Railroad [was] valueless, and that the first of the judgments recited in the petition was obtained by consent merely, and the other by default. This was all the evidence in the cause. The court found for plaintiff; thereupon the defendant filed its motion for a new trial, as follows:

In the circuit court of the United States for the eastern district of Missouri.

THOMAS FAUNTLEROY
vs.
THE CITY OF HANNIBAL.

The defendant moves the court to grant a new trial in the above-entitled cause, for the reason that the court erred in admitting incompetent evidence against the objection of defendant.

J. M. & C. H. KRUM,
For Defendant.

48 Which was by the court overruled, and the defendant then and there excepted. And that the said matters may become of record in said cause, the defendant tenders this bill of exceptions, and prays that the same may be signed; which is accordingly done.

SAMUEL TREAT, *Judge.*

And the said supersedeas bond, so approved as aforesaid, is in the words and figures following, to wit:

Know all men by these presents that we, The City of Hannibal, as principal, and J. T. K. Hayward, J. M. Armstrong, L. C. Fry, J. P. Richards, D. M. Dulany, se'r, F. L. Dubach, Thos. K. Collins, David Dubach, W. E. Payne, Milton Strong, F. Waller, jr., Josiah Leamon, E. H. Pierce, Jas. Bond, Jonathan Smith, W. C. Foreman, A. Shenker, John J. Cruikshank, jr., John T. Holme, John L. Rauh, R. Q. Stevens, R. E. Anderson, Jesse Robinson, J. M. Patton, John E. Catlett, W. H. Loomis, H. C. Schultz, Joseph Rowe, A. R. Levering, Alfred Toll, W. R. Pitts, Wm. B. Drescher, J. L. Robards, J. O. Farmer, F. P. Hearne, Geo. M. Harrison, Geo. H. Hawes, Benton Coontz, Chas. T. Hayward, Jno. B. Shepherd, A. W. Pettibone, Fred. Waller, sr., Jesse H. Mc-

Veigh, S. T. McKnight, John Ure, John Herriman, as sureties,
49 are held and firmly bound unto Thomas Fauntleroy, in the full and just sum of nineteen thousand dollars ($19,000.00), to be paid to the said Thomas Fauntleroy, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 19th day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas lately, at the March term, 1879, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between Thomas Fauntleroy, plaintiff, and The City of Hannibal, defendant, judgment was rendered against the said defendant in the sum of nine thousand and four hundred and thirteen dollars and eighty-three cents, and the said defendant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said plaintiff, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said City of Hannibal, defendant as aforesaid, and plaintiff under said writ of error, shall prosecute said writ to effect, and answer all dam-
50 ages if it fail to make good its said plea, then the above obligation to be void; else to remain in full force and virtue.

[CORPORATE SEAL.] THE CITY OF HANNIBAL,
By J. T. K. HAYWARD, [SEAL.]
Mayor.

Attest:

W. E. FORMAN,
City Clerk.

J. T. K. HAYWARD.	[SEAL.]	H. C. SCHULTZ.	[SEAL.]
F. S. DUBACH.	[SEAL.]	JOSEPH ROWE.	[SEAL.]
THOS. K. COLLINS.	[SEAL.]	J. M. ARMSTRONG.	[SEAL.]
W. E. PAINE.	[SEAL.]	D. M. DUNLAVY, SR.	[SEAL.]
MILTON STRONG.	[SEAL.]	DAVID DUBACH.	[SEAL.]
F. WALLER, JR.	[SEAL.]	A. R. LEVERING.	[SEAL.]
JOSIAH LEAMON.	[SEAL.]	ALFRED TOLL.	[SEAL.]
E. H. PIERCE.	[SEAL.]	WM. R. PETTS.	[SEAL.]
JAS. BOND.	[SEAL.]	WM. B. DRESHER.	[SEAL.]
JONATHAN SMITH.	[SEAL.]	J. L. ROBARDS.	[SEAL.]
W. C. FOREMAN.	[SEAL.]	J. O. FARMER.	[SEAL.]
A. SHINKER.	[SEAL.]	F. P. HEARNE.	[SEAL.]
JNO. J. CRUIKSHANK, JR.	[SEAL.]	GEO. M. HARRISON.	[SEAL.]
JNO. T. HOLME.	[SEAL.]	GEO. A. HAWES.	[SEAL.]
JOHN L. RAUH.	[SEAL.]	BENTON COONTZ.	[SEAL.]
B. O. STEVENS.	[SEAL.]	CHAS. T. HAYWARD.	[SEAL.]
R. E. ANDERSON.	[SEAL.]	JNO. B. SHEPHERD.	[SEAL.]
JESSE ROBINSON.	[SEAL.]	A. W. PETTIBONE.	[SEAL.]
J. M. PATTON.	[SEAL.]	FR. WALLER, SEN.	[SEAL.]
JOHN S. CATLETT.	[SEAL.]	JESSE H. MCVEIGH.	[SEAL.]
W. H. LOOMIS.	[SEAL.]	S. T. MCKNIGHT.	[SEAL.]
51 JOHN URE.	[SEAL.]	L. C. FRY.	[SEAL.]
JOHN HARRIMAN.	[SEAL.]	J. P. RICHARDS.	[SEAL.]

Approved.

SAMUEL TREAT, *Judge.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for said district, hereby certify that the above and foregoing is a full and complete copy of the record and proceedings had in the above-entitled cause, as fully as the same appear on file and of record in my office.

In witness whereof I have hereto signed my name and affixed the seal of said court this 16th day of June, 1879, at office in the city of St. Louis, in said district.

[SEAL.]

M. M. PRICE, *Clerk.*
By T. L. CRAWFORD, *Deputy*

(Indorsement on cover:) No. 251. The City of Hannibal, pl'ff in error, vs. Thomas Fauntleroy. E. Missouri, C. C. U. S. Filed 19 September, 1879.

FILED
NOV 5 1892
JAMES H. McKENNEY, CLERK

IN THE

Supreme Court of the United States.

No. 251.

THE CITY OF HANNIBAL, - - *Plaintiff in Error,*

vs.

THOMAS FAUNTLEROY, - - *Defendant in Error.*

STATEMENT, ASSIGNMENT OF ERRORS AND ARGUMENT,

For Plaintiff in Error.

J. M. & C. H. KRUM,
For Plaintiff in Error.

IN THE

Supreme Court of the United States.

No. 251.

THE CITY OF HANNIBAL, - - *Plaintiff in Error,*

vs.

THOMAS FAUNTLEROY, - - *Defendant in Error.*

STATEMENT.

The defendant in error sues on six bonds, of one thousand dollars each, and forty-eight interest coupons, of fifty dollars each; aggregating, principal and interest, eight thousand four hundred dollars.

The bonds and coupons sued on are as follows:

Copy of Bond.

No. 8.] STATE OF MISSOURI. $1,000.00

Bond of the City of Hannibal issued to pay calls on subscription for stock in the Pike County Railroad, Illinois.

Twenty years after date, City of Hannibal promises to pay to the order of A. O. Nash, Auditor of said city, or bearer, at the American Exchange Bank, New York, one thousand dollars, for value received, without defalcation, with interest on the same at the rate of ten per cent. per annum, and payable semi-annually at the same place.

That is to say, fifty dollars on the first day of October, and a like sum on the first day of April, on each year, upon presentation of the coupons severally hereto annexed, until the payment is well and truly made of the said principal sum of one thousand dollars.

In witness whereof, I, the Mayor of said city, hereto subscribe my name, and cause the seal of said city to be affixed, and the Auditor of the said city countersigns the same, at the city aforesaid, this first day of April, A. D., 1858.

GEO. W. SHIELDS, *Mayor.*

A. O. NASH, *Auditor.*

Copy of Coupon.

$50.]

Cashier of the American Exchange Bank, New York, pay the bearer $50 on the 1st day of October, 1874, for one-half year's interest on bond issued by the city of Hannibal in aid of the construction of the Pike County Railroad, Illinois.

No. 33, B. 8.

A. O. NASH, *Auditor.*

These bonds and coupons were issued, as claimed by the defendant in error, under the authority of the following act of the Missouri Legislature:

"An Act to amend the charter of the City of Hanibal:

* * * * * * * * * * * * * *

"Sec. 3. Said City Council shall have power to subscribe for and take stock in any railroad terminating at the city of Hannibal, or upon the bank of the Mississippi River, opposite to said city in the State of Illinois. But before such subscription shall be valid, it shall be ratified by a majority of the tax-payers, at a poll to be opened for that purpose."

Approved February 27, 1857.

The defendant in error brought suit, in 1871, to recover interest which had matured on the bonds now sued on, together with others of the same issue. At the April term, 1871, of the United States Circuit Court for Missouri, *by consent*, judgment was entered in that sum for interest which had matured between April 1, 1861, and October 1, 1870.

In 1874, in the same Court, the defendant in error again sued to recover interest on same bonds, and the principa. of other bonds. At the April term, 1874, he obtained judgment *by default.*

These judgments were paid by plaintiff in error. In his petition in the present case, the defendant in error alleges that after the passage of the Act of February 27, 1857, the City Council of plaintiff in error passed an ordinance, authorizing and directing the Mayor to subscribe for the city one hundred thousand dollars in stock, in the Pike County Railroad, which had its western terminus at a point in the State of Illinois, opposite to the city of Hannibal, *the stock to be paid for in bonds of the city.* This ordinance also directed that a poll be opened for the purpose of obtaining a ratification of the subscription by the tax-payers of the city. The ordinance was approved October 22, 1857. The petition alleges further:

That, in pursuance of the ordinance, an election was held on the 2d of November, 1857, and the poll-books of said election were returned to the City Council on the 4th of November, 1857, and the City Council on that day decided that the number of votes for ratification was three hundred and sixteen, and the number against, thirty-two votes, that being a large majority of the voters of said city voting at said election, ratifying said subscription.

And the City Council, on the 1st of December, 1857, in compliance with said ratification, authorized the Mayor to issue the bonds of the city to the Pike County Railroad, in accordance with calls on the capital stock made by the Board of Directors, and in pursuance of the ordinance of 22d of October, 1857.

The said city appointed agents to vote on its stock so

subscribed, issued the bonds now sued on by the plaintiff, has retained its stock and paid interest on said bonds up to the time of the falling due of the interest thereon included in this suit.

To these averments the plaintiff in error answers, denying that the City Council decided that the number of votes for ratification of the subscription to the stock of the Pike County Railroad was three hundred and sixteen, and the number against, thirty-two; and denying that the said number was a large or other majority of the voters voting at said election in ratification of said subscription. The defendant denies that the order to issue the bonds was in compliance with any ratification of the subscription, and denies that the subscription to stock in the Pike County Railroad was ever in any manner ratified as required by the statute for such case provided. And the defendant states, that while it is true, as alleged, that stock in the Pike County Railroad was issued to defendant, yet such stock was then, has ever since been, and now is, utterly valueless and without benefit to defendant.

The case was submitted to the Court without the intervention of a jury. At the hearing, the defendant in error offered in evidence the bonds and coupons sued on, and certain ordinances and proceedings of the City Council of the plaintiff in error, which are found on pages ten to twenty-four, inclusive, of the Record. To all of this evidence, the plaintiff in error objected on the ground that it was incompetent, and that the petition did not state facts sufficient to constitute a cause of action. This objection was overruled, and plaintiff in error duly excepted.

It was then admitted by the defendant in error, that

the stock held by the plaintiff in error in the Pike County Railroad was of no value. A motion for a new trial was filed by plaintiff in error. This having been overruled, the case comes to this Court by writ of error.

ASSIGNMENT OF ERRORS.

In view of the foregoing statement, the plaintiff in error assigns the following errors upon the record:

1. The bonds and coupons ought not to have been admitted in evidence, because no authority to issue them was shown by the defendant in error.

2. The ordinances of the City Council were incompetent, because they did not amount to a ratification of the issue of the bonds.

3. There was no evidence of a ratification of the subscription to stock, by the required vote of tax-payers. And the ordinance in relation to revenue, found at page twenty of the Record, was incompetent, and improperly admitted in evidence.

4. The resolutions of the City Council, appointing agents to represent the plaintiff in error at corporate meetings of the Pike County Railroad, were improperly admitted in evidence, in view of the fact, admitted by defendant in error, that the stock held in the corporation was without value.

5. The ordinance in relation to a poll-tax was utterly incompetent.

6. Upon the whole case, the judgment ought to have been for plaintiff in error. No authority was shown for the issue of the bonds, in the first instance. No ratification of their issue was shown. None could result from

the facts established in evidence. No estoppel resulted against the plaintiff in error from any facts established in evidence.

ARGUMENT.

Two questions are presented by the record in this case.

First. Whether the defendant in error has shown authority in the plaintiff in error to issue the bonds which constitute the basis of this suit.

Secondly. Whether there are any facts in the record by which the plaintiff in error can be estopped from disputing the validity of the bonds.

These questions arise under the objections made to the admission of evidence offered by the defendant in error, and are fully and distinctly presented by the whole record.

We respectfully submit:

I.

No authority to issue the bonds is shown by the evidence offered by the defendant in error.

1. Authority to issue the bonds depended upon the condition that the subscription to stock in the railroad corporation had been ratified by a "*majority of the taxpayers*" of the plaintiff in error, "*at a poll to be opened for that purpose.*"

Beyond the words, "Bond of the City of Hannibal, issued to pay calls on subscription for stock in the Pike County Railroad, Illinois," the bonds sued on contain no reference whatever to the purpose for which they were issued by the municipal corporation. They do not contain recitals. They do not refer to a statute, or ordi-

nance. They do not assert compliance with any law which authorized their issue. They do not allege that officers whose province it was to adjudge a compliance with the conditions upon which the bonds could be issued, had determined that there was such compliance.

The bonds, therefore, are silent as to all of those matters the recital of which might have changed the aspect of this case.

2. This Court has always held:

"That every holder of a municipal bond is chargeable with notice of the provisions of the law by which the issue of his bond was authorized. If there was no law for the issue, there can be no valid bond."

Ogden v. *Daviess County*, 102 U. S., 641.

"Dealers in municipal bonds," (*Anthony* v. *County of Jasper*, 101 U. S., 697), "are charged with notice of the laws of the State granting power to make the bonds they find on the market. This we have always held. If the power exists in the municipality, the *bona fide* holder is protected against mere irregularities in the manner of its execution; but if there is a want of power, no legal liability can be created."

3. Conceding that on him rested the burden of showing that authority to issue the bonds sued on had been conferred upon the plaintiff in error, the defendant in error pleaded as part of his petition, and offered in evidence, certain ordinances and proceedings of the City Council of Hannibal, and certain poll-books of an election held in that city. These were all objected to as being incompetent and irrelevant testimony. We respectfully call the attention of the Court to them in the order of their presentation.

THE POLL-BOOKS.

These were pleaded, as we have already shown, as part

of the plaintiff's petition. They were incompetent evidence for various reasons.

a. The charter required the vote of ratification to be taken at a "*poll to be opened for that purpose.*" The vote to be taken was that of the tax-payers of the city. The poll-books, of themselves, did not show that a poll had been opened for the purpose of obtaining a vote of the tax-payers. It appears that a general poll was opened for the election of city officers, and for the ratification of the subscription, but it does not appear that such poll was opened to obtain an expression from the tax-payers.

We respectfully submit that the Legislature had in view a special election, at which the vote of the tax-payers was to be taken. The ordinance, to be found on page nineteen of the Record, directs the Mayor to cause a poll to be opened in order to obtain a ratification of the subscription by the tax-payers. The Legislature evidently contemplated that the attention of the tax-payers should be called to the question of ratification by the designation of polls for the purpose of a special election. It was on them that the burden of providing for the payment of interest and principal would fall. The burden of such payments would fall on their property. Their consent was to be obtained at a special election. But the Record contains no evidence that a poll was opened for the specific purpose of obtaining the necessary ratification. No notice to tax-payers is shown. There is no evidence that the Mayor performed the duty assigned him by the Council. It is even doubtful whether the Council could properly delegate to the Mayor authority to open a poll for the designated purpose. No such

authority is conferred on the Council by the charter, or any amendatory act.

Ruggles v. *Collier*, 43 Mo., 353, 366.

The poll-books alone contain reference to the purposes of the election. They evidence no distinction whatever between voters. A general poll was opened. A general vote was taken.

b. The poll-books contain no evidence whatever that a vote of tax-payers was taken upon the question of ratification. Upon this point the trial Court was of opinion that every one who voted at the general election was a *tax-payer*, because of certain provisions of the charter and ordinances of the city. The charter being a public law (*Fauntleroy* v. *Hannibal*, 1 Dillon, 118), we now bring it to the attention of this Court.

Section 10, of Article 1, provides:

"All free white male citizens, who have arrived at the full age of twenty-one years, and who shall be entitled to vote for State officers, and who shall have resided within the city limits at least six months next preceding any election, and, moreover, who shall have paid a city tax, or any city license according to ordinance, shall be eligible and entitled to vote at any ward or city election for officers of the city."

Section 5, of Article 6, provides:

"The City Council shall have power to impose a poll-tax of one dollar on all able-bodied male persons over the age of twenty-one, and under fifty years of age."

From these provisions, the trial Court concluded that the payment of a city tax, or poll-tax, was a condition precedent to a right to vote, and, hence, that all the voters

who voted at the general polls must have been tax-payers.

We respectfully submit that this is a wholly erroneous conclusion.

That the Legislature did not intend to confound *tax-payers* with voters qualified to vote because they may have paid a tax, is evident from the provisions of the very law under which the defendant in error seeks to find authority for the issue of the bond. Of that law, section three confers authority for the issue. "Before such subscription shall be valid, it shall be ratified by a majority of the *tax-payers* at a poll to be opened for that purpose."

Section two provides: "Said Council shall also have power to borrow on the credit of the city, and to pledge the revenues and public property of the city for the payment thereof; but a greater rate of interest than ten per cent. shall not be paid on any sum borrowed, unless two-thirds of the *qualified voters* of said city, at polls to be opened for that purpose, shall instruct the payment of a greater rate." If every one who was qualified to vote at the general election of the city was regarded by the Legislature as a tax-payer, why should different terms be used in consecutive sections of the law? Why not say "qualified voters," in both sections? Why provide for one kind of submission in one, and for another kind in the succeeding section? The answer is, that the Legislature intended to distinguish *tax-payers* from ordinary voters. No other answer can be given without imputing to the Legislature a want of understanding in matters of legislation.

Furthermore, the section of the charter under which

the trial Court found authority for holding that *tax-payers* meant *qualified voters*, and *vice versa*, contains no provision which warrants such a conclusion. The qualification obtainable by the payment of a city tax, or a city license, is not general. *It is expressly limited to ward or city elections, for officers of the city.* And, as far as concerns the provision of the charter authorizing the levy of a poll-tax, we have only to say, that there is no evidence in the Record that, down to the election of November 2, 1857, a poll-tax had ever been levied. The ordinance "in relation to revenue," found at page twenty of the Record, establishes no such fact. The ordinance was not adopted until May 23, 1859. The vote for ratification was had, if at all, on November 2, 1857. Hence, the ordinance not only does not serve to show that a poll-tax had been levied prior to November 2, 1857, but is utterly incompetent for any purpose in the case.

Under bonds which contained no recitals of authority for their issue, the defendant in error has thus erroneously been allowed to introduce irrelevant and incompetent evidence. The burden to show authority for the issue of the bonds rested on him. (*Mayor* v. *Ray*, 19 Wallace, 468). He has endeavored to establish authority by the introduction of poll-books which show a general vote, but which do not show the vote of a single tax-payer.

THE ORDINANCES.

1. The ordinance in relation to revenue.

This is on page twenty of the Record. It is incompetent evidence, as already indicated, because it was passed *more than a year after* the vote relied on had been taken.

Just what relevancy to the issue this ordinance had, we are unable to even conjecture.

2. The ordinance giving aid to the Pike County Railroad Company.

This ordinance is on page twenty-one of the Record. The ordinance was approved June 25, 1859. To what it relates, its title gives some information. But who the parties are to whom it relates, the Record does not show. Furthermore, no authority is shown for the passage of such an ordinance. It does not in terms, or by necessary implication, relate to the bonds issued in aid of the railroad. Somebody seems to have guaranteed something. Just what it was, the defendant in error has not seen fit to disclose. We hope it may prove it to be the bonds sued on. He may there be assured against loss as against the city, incurred by his foolhardy purchase of bonds for whose issue he was charged with notice that there was no authority.

Such, with the exception of the ordinance directing the subscription, are the ordinances relied on by the defendant in error. We respectfully submit that they have nothing to do with the case. They are utterly irrelevant to the issue, and ought to have been excluded.

I.

There are no facts in the Record by which the plaintiff in error can be estopped from disputing the validity of the bonds.

The defendant in error relied, in the trial Court, upon the following matters as working an estoppel against the municipal corporation:

1. Two judgments for interest on one, also for the principal of half of the same series of bonds between the same parties, at earlier terms of the same Court.

2. Proceedings of the City Council, based upon the election held November 2d, 1857, which proceedings are on page twenty of the Record.

3. Ownership of stock in the Pike County Railroad, and the action of the Council in appointing agents to vote such stock at elections for Directors of the road.

4. Provision made by the Council for the surrender of coupons in payment of city taxes, together with the acceptance of such coupons for the purposes of such payments.

These are the matters relied on to work an estoppel against the plaintiff in error. As to these, we respectfully submit:

1. The two judgments set up in the petition and admitted to have been rendered, did not work an estoppel. The first judgment was rendered at the April term, 1871, of the Circuit Court for the Eastern District of Missouri. *It was obtained by consent.* (See Record, page 24, line 22).

The second judgment was rendered at the April term, 1874, of the same Court. *It was obtained by default.* (See same part Record).

This being the condition of the Record as to these judgments, it is manifest that they constitute no bar to a contest as to the validity of the bonds. No issue now presented was presented in those suits. All questions now presented are open, notwithstanding the judgments.

Such was the ruling of the trial Court. And such is the rule of procedure as established by this Court.

Cromwell v. *Sac County*, 94 U. S., 351.

2. The proceedings of the City Council, alleged to have been based upon the election of November 2, 1857, do not work an estoppel.

These proceedings are evidenced by an abstract from the record of the Council, as follows:

At a called meeting of the City Council of the city of Hannibal, held on the 4th day of November, 1857, among other entries of record, the following is to be found:

"The Clerk read to the City Council the certificate of the Mayor, and one Judge of Election from each ward in the city, whereby it was shown to the satisfaction of the Council that, at the municipal election held in the several wards in the city on Monday, the 2d day of November, 1857, George W. Shields was duly elected for the office of Mayor; John L. Lacy, for the office of City Recorder; Richard LaMar, for the office of City Marshal; Thomas A. Harris, for the office of City Attorney; C. L. Elgin, Thomas Jackson, and E. H. Turner, for City Councilmen of the First Ward; B. F. Hixon, H. Jordan, and William G. Daulton, for City Councilmen for the Second Ward; John D. Dowling, R. E. Coontz, and Charles Curts, for City Councilmen for the third ward; and thereupon, on motion of McDaniel, it was resolved by the City Council that certificates under the seal of the city, signed by the Mayor and countersigned by the Clerk, be made out and delivered, so soon as may be, to each one of the officers-elect above named."

All of which was passed by the Council.

For ratification, three hundred and sixteen votes; against, thirty-two votes.

These proceedings do not work an estoppel for several reasons.

Regarded as a determination by the City Council as to the result of the election held, it will be observed that the resolution applied solely to the result as to candidates for office. The certificate of the Mayor and one Judge of Election from each ward was read, "whereby it was shown to the satisfaction of the Council," that George W. Shields was duly elected Mayor, and that certain other individuals were chosen for other official positions. It was thereupon resolved, that certificates of election be issued to the officers who had then been chosen by the people.

But the resolution is limited to this end. It proceeds no further. It determines nothing more. Certain officers are declared to have been elected. That is all.

After the entry, which evidences this action of the Council, appear these words: "*For ratification, three hundred and sixteen votes; against, thirty-two votes.*" These are votes upon what question of ratification? Were they cast to determine whether the city of Hannibal should donate one hundred thousand dollars to the Pike County Railroad? Were they the votes of tax-payers? Were they the votes of tax-payers cast at a poll opened to obtain an expression upon the question of subscription?

The entry does not answer one of these questions. It does not form part of the resolution. It does not purport to relate to the subscription under the act of February 27, 1857. At best, it seems to be a mere interpolation upon the face of the Record, made for some purpose

not now open to explanation. When it was made does not appear. Who directed it to be made does not appear. In any event, it does not amount to a declaration by the Council, that at an election held by tax-payers a majority of the votes was cast in favor of the subscription. It does not recite or state, even in general terms, that the proposed indebtedness was sanctioned under any of the circumstances which would permit the issue of the bonds.

Buchanan v. *Litchfield*, 102 U. S., 292.

The bonds sued on do not contain recitals. It is not stated in them that at a poll opened for the purpose, a vote of the tax-payers ratified the subscription. As to such matters, the bonds are silent.

This Court has gone far in upholding the validity of municipal laws. It was essential to the law of commercial paper that the highest tribunal of the law should set its face against wholesale repudiation. But while irregularities in methods of procedure, under acts conferring authority, have been ignored by this Court, still, upon the question now being discussed, it has uniformly been held that, to work the estoppel insisted on by defendant in error, the representatives of the corporation must not only be expressly or impliedly qualified to act, but the result of their judgment must be evident by recitals in the bonds, or by some appropriate matter of record. When such is the case, the would-be purchaser need look no farther than the recitals.

"Power to issue bonds to aid in the construction of a railroad is frequently conferred upon a municipality in a special manner, or subject to certain regulations, conditions and qualifications; but if it appears by their recitals that the bonds were issued in conformity

with these regulations, and pursuant to those conditions and qualifications, proof that any or all of these recitals are incorrect will not constitute a defense for the corporation in a suit on the bonds or coupons, if it appears that it was the sole province of the municipal officers who executed the bonds to decide whether or not there had been an antecedent compliance with the regulation, condition or qualification, which, it is alleged, was not fulfilled."

St. Joseph Township v. *Rogers*, 16 Wall., 644.
Kennicott v. *Supervisors*, id., 452.

So, in a later case, the same doctrine is restated:

"Where legislative authority has been given to a municipality, or to its officers, to subscribe for the stock of a railroad company, and to issue municipal bonds in payment, but rely on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment, that the officers of the municipality were invested with power to decide whether the condition precedent has been complied with, their recital that it has been, made in the bonds issued by them and held by a *bona fide* purchaser, is conclusive of the fact and binding upon the municipality; for the recital is itself a decision of the fact by the appointed tribunal."

Coloma v. *Eaves*, 72 U. S., 492.
County of Moultrie v. *Savings Bank*, id., 631.
Marcy v. *Township Oswego*, id., 637.

"Where the bonds on their face recite the circumstances which bring them within the power, the corporation is estopped to deny the truth of the recital."

Orleans v. *Pratt*, 99 U. S., 676.

And in the very recent case of *Buchanan* v. *Litchfield*, 102 U. S., 279, where the bonds contained recitals that they were issued under the authority of a certain act of the Legislature, and pursuant to a certain ordinance of the city, it was held that the *mere fact* that the bonds *were* issued without any recitals of the circumstances bringing them within the limit fixed by the Constitution, was not, in itself, conclusive proof in favor of a *bona fide*

holder; that the circumstances existed which authorized them to be issued. "Any different conclusion from that indicated would extend the doctrines of this Court upon the subject of municipal bonds farther than would be consistent with reason and sound policy, and farther than we are now willing to go." (Id., 292).

Again, nothing contained in the entry "For ratification, three hundred and sixteen votes; against, thirty-two votes," amounts to such determination of record as will conclude plaintiff in error from disputing the validity of the bonds.

There are two decisions of this Court which hold that the action of the persons or tribunal authorized by law to determine the result of an election held for the purpose of ascertaining whether a municipal township shall issue its bonds in aid of an object authorized by law, is conclusive, and a *bona fide* purchaser of the bonds is under no obligation to look beyond it. But, in each of these cases, the evidence was clear that such determination was actually had.

Thus, in the earlier case, the action of the Board of County Commissioners was evidenced as follows:

"Friday, Agust 30, 1872.—At this, a called meeting of the Board, there were present H. W. Wellman and P. M. Gilbert.

"The Board proceeded to canvass the vote of Rock Creek Township on the proposition to donate the bonds of said township to the Atchison, Topeka and Santa Fe Railroad Company, and determine the following as a result of said election:

"For the issuing of said bonds, - - - - - -	52 votes.
"Against the issuing of said bonds, - - - - - -	51 votes.
"Total, - - - - - - - - - - - -	103 votes.

"Adjournment: Upon motion, it was ordered that the Board adjourn to meet Monday, September 2, 1872."

This entry is clear, explicit and beyond all question. For what purpose the Board met is clearly indicated. That they canvassed the vote is equally clear. That they reached a conclusion is also clear. And in these respects the case differs altogether from that at bar.

Township v. *Strong*, 96 U. S., 376.

In the later case, the election was held pursuant to an order published in due form. The Board of Commissioners canvassed the returns. In making such canvass, they declared, in express terms, on May 10, 1867, that there was a majority of twenty-six votes "for railroad bonds." In 1869, a special election was held in a township where, in 1867, there had been no election. The Board duly canvassed this vote. They expressly declared that a majority of votes had been cast in favor of the proposed subscription. This Court found, from an inspection of the record, that such express declarations had been made by the Board of Commissioners.

Block v. *Commissioner*, 99 U. S., 686.

In the Block case, the bonds contained no recitals. "If they did," says the Court, "contain a recital that an election had been held, and a majority had voted for the issue of the bonds, the recital would have been conclusive on the County, and a purchaser would have needed to look no farther than to the act of the Legislature. This is according to all our decisions. *But, in the absence of any recital, it may be conceded, he was bound to inquire whether a majority vote had been returned for the issue of the bonds.*"

He makes inquiry by going to the records of the Board of Commissioners. There he finds that they have actually canvassed the vote. There he finds that they have determined, from such canvass, that the popular vote was in favor of the bond issue. He need look no farther. He is not bound to canvass the vote himself, or to revise or correct a mistaken canvass. Such is the settled doctrine of this Court. It has been announced in cases where the Board, intended by the Legislature to determine whether the condition precedent had been satisfied, had actually taken the necessary action, had reached a conclusion, and had evidenced the result by an appropriate declaration upon their records. But, in the present case, there was, and is, no such evidence. The City Council of Hannibal never declared what was the result of an election held to obtain the opinion of tax-payers upon the proposed issue of bonds. The vague and uncertain entry which appears to have been interpolated upon the record of proceedings, does not constitute such a declaration as is required by the settled rule of this Court. From that entry could any would-be purchaser of the bonds sued on reasonably conclude that the issue of the bonds had been ratified by a majority of the tax-payers? Could he say that an election had been had? Could he say that such election related to these bonds? Could he feel assured that a single tax-payer had voted at such election? Could he safely conclude that the Council had canvassed the vote of the tax-payers, and, upon such canvass, determined that a majority had indorsed the issue of the bonds? We understand the rule of estoppel laid down by this Court in bond cases to be equivalent to the declaration, that if a man so conducts himself, whether intentionally or not,

that a *reasonable* person would infer that a certain state of things exists, and acts on that inference, he shall afterwards be estopped from denying it. All authorities on the doctrine of estoppel concede that this is almost an extreme application of the doctrine. But the rule does not relieve those who negligently close their eyes to existing facts within their knowledge, or of which they have notice, or concerning which other facts exist sufficient to put a reasonable man upon inquiry. Here the defendant in error claims to be an innocent purchaser. He was not aware, he says, of any failure on the part of the corporation to observe the conditions upon which was based its authorityto issue the bonds. He relied, he says, upon the entry now being considered. He regarded that as a declaration that the vote of the tax-payers had sanctioned the issue of the bonds. But what does he bring before this Court as evidencing the assurance upon which he acted? Is it an express declaration of a relevant result? It is indefinite, vague and inconclusive. Does it indicate corporate action upon matters germain to the inquiry with which he was charged? It is absolutely foreign to any matter of ratification of the issue of these bonds, and, on its face, is significantly suggestive of a mere interpolation at the hands of some interested party. That which shall be sufficient to put a party upon inquiry is notice. "It will not do for a purchaser to close his eyes to facts—facts which were open to his investigation, by the exercise of that diligence which the law imposes." (*Brush* v. *Ware*, 15 Peters, 111.)

In making his inquiry us to the authority for the issue of the bonds now sued on, the defendant in error found upon the records of the City Council this indefinite and

inconclusive entry: "For ratification, three hundred and sixteen votes; against, thirty-two votes." It followed definite corporate action, evidenced by an express declaration and resolution. By its terms, it did not refer to the bonds voted to the railroad by the Council. It did not indicate what were the qualifications of the voters. It did not tell the defendant in error that the Council had canvassed a vote of tax-payers, and upon such canvass found a majority in favor of ratification. He saw fit to rely upon this inconclusive entry. He took no further steps. He made no further inquiry. And we respectfully submit that he has relied upon insufficient grounds, and upon such entries of record as would only have served to put a man of reasonable prudence upon farther inquiry. No such indefinite and irrelevant entry can conclude the corporation. (*Buchanan* v. *Litchfield*, 102 U. S., 292.)

3. The ownership of the stock in the railroad corporation, and the appointment of agents to represent the city at elections for Directors of the Railroad Board, did not work an estoppel against the city, or ratify the issue of the bonds.

a. The stock is admitted to have been worthless. It will hardly be contended, we imagine, that the extreme doctrine of *Pendleton County* v. *Army*, 13 Wall., 297, is to be applied this case. Worthless stock can hardly be considered a *quid pro quo* for one hundred thousand dollars.

b. In appointing agents to vote the stock, the City Council did no more than the Board of Supervisors in *Marsh* v. *Fulton County*. There the agents were ap-

pointed, and were required to attend the meetings of the stockholders, election of officers, and to represent the county as a "stockholder." It was held that, if the representatives of the county had no authority to issue the bonds in the first instance, their subsequent action in regard to the stock was equally without authority.

Marsh v. *Fulton Co.*, 10 Wall., 676.

4. The payment of interest by the corporation and the acceptance of coupons in payment of taxes did not amount to a ratification.

"We do not attach any importance to the fact that the town authorities paid one installment of interest on these bonds. Such a payment works no estoppel."

Loan Associatian v. *Topeka*, 20 Wall., 655.

In *Marsh* v. *Fulton County*, interest was paid; taxes were levied to pay interest, and some of the bonds were paid by the Supervisors. It was held that these steps did not amount to a ratification.

"They - the Supervisors—could not, therefore, ratify a subscription without a vote of the county, because they could not make a subscription in the first instance without such authorization."

Marsh v. *Fulton Co.*, 10 Wall., 676.

In view of the foregoing grounds of objection to evidence offered by the defendant in error, supported as they are by the repeated declarations of this Court, we respectfully submit, that such evidence was improperly admitted. And, upon the whole case, we also submit, the judgment ought to have been for the plaintiff in error.

J. M. & C. H. KRUM,

For Plaintiff in Error.

IN SUPREME COURT OF THE UNITED STATES.

No. 251.

OCTOBER TERM, 1881.

THE CITY OF HANNIBAL, PLAINTIFF IN ERROR,

vs.

THOMAS FAUNTLEROY, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MISSOURI.

ARGUMENT FOR DEFENDANT IN ERROR, BY JAMES GRANT AND WHIT. M. GRANT.

FILED, , 1882.

IN SUPREME COURT OF THE UNITED STATES.

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THE CITY OF HANNIBAL,
Plaintiff in Error,
vs.
THOMAS FAUNTLEROY,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MISSOURI.

ARGUMENT FOR DEFENDANT IN ERROR BY JAMES GRANT AND WHIT. M. GRANT.

STATEMENT OF CASE.

The defendant in error filed his petition in the Court below, stating that he was a citizen of the state of Virginia, seeking to recover of the plaintiff in error, which he averred to be a municipal corporation created by, existing under the laws, and a citizen of the state of Missouri.

That on April 1st, 1858, the said City of Hannibal executed its certain writings obligatory, or bonds, numbered 3, 4, 5, 6, 7 and 8, sealed with its corporate seal, signed by its Mayor and countersigned by its Auditor, whereby it promised to pay said Auditor or bearer in New York City $1,000 by each of said bonds for value received, without defalcation, twenty years after date, with ten per cent interest, payable semi-annually, October and April 1st each year, on presentation of the coupons attached, until the payment of the principal.

That said bonds recite that they were issued to pay calls on subscriptions for stock in Pike County Railroad, Illinois. That the bonds were issued to aid in the construction of said railroad, and the city received the stock, in payment of which the bonds were issued, and still holds the same.

That the city paid one or more installments of interest on said bonds and three of the series of said bonds which fell due April 1st, 1874.

That two judgments have been recovered upon the coupons from said bonds, among others in said Court, by Thomas W. Fauntleroy, through whom defendant in error claims against said city, one April 3d, 1871, and the other April 4th, 1874, which have been paid in full by plaintiff in error.

That the coupons due October 1st, 1874, and April 1st, 1875, and October 1st, 1875, and April 1st, 1876, and October 1st, 1876, and April 1st 1877, and October 1st, 1877, and April 1st, 1878, from said bonds, being forty-eight coupons of $50 each, making $2400; also said six bonds of $1000 each, making $6000—a copy of one each of bonds

and coupons attached to the petition, the others being like them except as to numbers and dates when coupons become due.

That the plaintiff (defendant in error) is the bearer and holder of bonds and coupons; wherefore defendant in error is entitled to recover of plantiff in error the amount of said coupons with seven per cent interest from date each became due, and said bonds, with ten per cent from maturity, for which judgment is asked. (Record, pp. 2, 3 and 4.)

Plaintiff in error entered its appearance, waived a separate count on each bond and coupon and the filing of bonds and coupons. (Record, p. 5.)

Defendant in error amended his petition setting up that he was the executor of Thomas W. Fauntleroy, the plaintiff referred to in said judgments, and held the bonds and coupons in trust for the creditors and heirs of his estate.

That the Legislature of Missouri amended the charter of the plaintiff in error, the City of Hannibal, February 27, 1857, authorizing it to subscribe and take stock in any railroad terminating at Hannibal, or upon the banks of the Mississippi river, opposite the city, in the state of Illinois; but before such subscription should be valid it should be ratified by a majority of the taxpayers at a poll to be opened for that purpose; also to borrow money on the credit of the city at a rate of interest not to exceed ten per cent, unless a two-thirds vote of the qualified voters at a poll opened for that purpose authorized a greater rate.

That after the passage of said act, and on October 22d, 1857, the city by ordinance directed its Mayor to sub-

scribe and take for the city $100,000 in stock in the Pike County Railroad, having its western terminus on the banks of the Mississippi river at a point in the state of Illinois opposite the city of Hannibal, said stock to be paid for in bonds of the city issued at par, payable not exceeding twenty years from date, bearing ten per cent interest, payable semi-annually. That November 2d, 1857, an election was held and poll books of the election returned to the City Council November 4th, 1857, and the Council that day decided that 316 votes were cast for ratification and 32 against it—that being a large majority of the voters voting ratifying said subscription.

That the City Council, December 1st, 1857, in accordance with said ratification, authorized the Mayor to issue the bonds of the city to said Railroad Company in accordance with the calls on the capital stock made by its directors and in pursuance with the ordinance of October 22d, 1857. That the city appointed agents to vote the stock, issued the bonds in suit, has retained its stock and paid interest on the bonds up to those in suit.

Attaches the records of the City Council setting out said ordinance, copy of the poll-books returned, the declared result of the election, the order to issue the bonds, orders appointing agents to vote the stock and for payment of interest. (Record, p. 6.)

The plaintiff in error filed an answer stating that the judgments referred to were obtained by consent and by default, and not on issue affecting the validity of the bonds. Denies that the City Council decided that the votes for ratification were 316 against 32. Denies that said number was a large or other majority of the voters voting at said elec-

tion ratifying said subscription. Denies that the order to issue the bonds was in compliance with any ratification of said subscription, or that the subscription was ever ratified as required by statute. That the stock in said Pike County Railroad was issued to defendant, but was then, and is now, valueless. (Record, p. 7.)

Defendant in error filed a general replication. (Record, p. 8.)

A copy of the bond sued on and attached to the petition, as follows:

"NO. 8. STATE OF MISSOURI. $1000.00

"BOND OF THE CITY OF HANNIBAL, ISSUED TO PAY CALLS ON SUBSCRIPTIONS FOR STOCK IN THE PIKE COUNTY RAILROAD, ILLINOIS.

"Twenty years after date, the City of Hannibal promises to pay to the order of A. O. Nash, Auditor of said city, or bearer, at the American Exchange Bank, New York, One Thousand Dollars, for value received, without defalcation, with interest on the same at the rate of ten per cent per annum, and payable semi-annually at the same place. That is to say, fifty dollars on the first day of October, and a like sum on the first day of April in each year upon presentation of the coupons severally hereto annexed until the payment is well and truly made of the said principal sum of one thousand dollars.

"In witness whereof, I, the Mayor of said city, hereto subscribe my name and cause the seal of said city to be affixed, and the Auditor of the said city countersigns the same at the city aforesaid this first day of April, A. D. 1858.

"GEO. W. SHIELDS, Mayor.

"A. O. NASH, Auditor."

And a copy of the coupon as follows:

"$50.00.

"Cashier of the American Exchange Bank, New York:

"Pay the bearer Fifty Dollars on the first day of October, 1874, for one-half year's interest on bond issued by the City of Hannibal in aid of the construction of the Pike County Railroad, Illinois.

"No. 33, B. 8. A. O. NASH, Auditor."

A jury was waived and the case tried to the Court. The defendant in error offered in evidence the bonds and coupons sued on. (Record, p. 10.)

Also, certified copies of the poll-books of the election held November 2d, 1857. (Record, p. 11.)

The total number of voters of the First ward was 161. For ratification, 122; against it, 18 votes; total vote, 140—majority, 104. The vote for Mayor was: Shields, 118; Green, 36; total, 154. (Record, p. 13.)

Second Ward—Number of voters, 90. For ratification, 69; against, 10; total, 79—majority, 59. On Mayor: Shields, 69; Green, 18; total, 87. (Record, p. 15.)

Third Ward—Total number of voters, 137. For ratification, 125; against it, 4, total vote, 129—majority, 121. On Mayor: Shields, 104; Green, 28; total, 132. (Record, p. 17.)

Voters 1st Ward—161.				For ratification, 122.		Against, 18	
" 2d " — 90				" "	69	"	10
" 3d " —137				" "	125	"	4
Total voters, city,	388			" "	316	"	32

Total vote on the proposition was 348; the majority in favor of ratification, 284. Total vote on Mayor, 373. Majority in favor of ratification over total vote on Mayor, 259, and over the total vote of the city as shown by said tables (Record, pp. 12, 15 and 17), 244.

Also, an ordinance of the city, dated October 22d, 1857, directing the Mayor to make said subscription, &c. (Record, p. 19.)

Also, an entry from the records of the City Council proceedings, dated November 4th, 1857, showing the vote returned for ratification 316 against 32. (Record, p. 20.)

Also, an entry dated December 7th, 1857, directing the Mayor to issue the bonds to pay calls on said stock and deliver them to the Railroad Company according to said ordinance. (Record, p. 20.)

Also, other entries whereby agents are appointed by the city to vote said stock, ordering payment of interest on the bonds, directing the Auditor to receive coupons for taxes and approving his reports, making returns of such payments. (Record, pp. 20, 21, 22 and 23.)

To all this evidence plaintiff in error objected as irrelevant and incompetent, and because the petition and amendment did not state facts constituting a cause of action, objections overruled and plaintiff in error excepted. (Record, p. 24.)

It was then admitted by defendant in error that said stock was valueless; that the first of said judgments was by consent and the other by default.

The Court found for defendant in error and assessed his damages at $9,413.83 and costs, giving interest on said

judgment represented by bonds, $6,614.03, at ten per cent, and that represented by coupons, $2,799.80, at six per cent. (Record, p. 8.)

Plaintiff in error then filed a motion for a new trial upon the ground that the Court erred in admitting incompetent evidence against its objection, which was overruled, and plaintiff in error excepted. (Record, p. 24.)

And that said matters might become of record in said cause, plaintiff in error tendered its bill of exceptions, which was signed. (Record, p. 24.)

Plaintiff in error then sued out its writ of error, which was allowed. (Record, p. 1.)

Citation issued and service accepted. (Record, p. 2.)

Supersedeas was awarded. (Record, p. 9.)

And bond approved and filed. (Record, pp. 24 and 25.)

There was not, in fact, and is not in the record, any stipulation in writing filed with the Clerk waiving a jury, and there is in the record no statement that such waiver was made or filed.

The act authorizing the subscription is entitled "An Act to amend the charter of the City of Hannibal," approved February 27th, 1857. (Laws of Missouri, 1856–7, p. 421.) Section 1 is not material, relating to the levy and collection of general taxes. Section 2 is as follows:

"SECTION 2. Said Council shall also have power to borrow on the credit of the city and to pledge the revenues and public property of the city for the payment thereof; but a greater rate of interest than ten per cent shall not be

paid on any sum borrowed unless two-thirds of the qualified voters of said city at polls to be opened for that purpose shall instruct the payment of a greater rate."

Section 3 is as follows:

"SEC. 3. Said City Council shall have power to subscribe for and take stock in any railroad terminating at the city of Hannibal or upon the bank of the Mississippi river opposite to said city in the state of Illinois, but before such subscription shall be valid it shall be ratified by a majority of the taxpayers at a poll to be opened for that purpose. All acts and parts of acts which conflict with this are hereby repealed."

Article 1, Section 10, Charter 1851, of Hannibal, Laws 1651, p. 327, amending Article 4, Section 2, Laws 1845, is as follows:

"SEC. 10. All free white male citizens, who have arrived at the full age of twenty-one years, and who shall be entitled to vote for state officers, and who shall have resided within the city limits at least six months next preceding any election, and moreover, who shall have paid a city tax or any city license according to ordinance, shall be eligible and entitled to vote at any ward or city election for officers of the city."

Section 15, Article 8, Charter, Laws 1845, p. 126, is as follows:

"This act is hereby declared to be a public act, and may be read in evidence in all courts of law and equity in this state without proof."

Section 3, Article 5, Laws 1845, p. 120, is as follows:

"SEC. 3. The City Council shall have power to require of all officers appointed or elected in pursuance of this

charter, bond with penalty and security for the faithful performance of their respective duties, as may be deemed expedient, and also to require all officers appointed or elected as aforesaid, to take an oath for the faithful performance of the duties of their respective offices, before entering upon the discharge of the same; to establish, support and regulate common schools; to borrow money on the credit of the city: *Provided* that no sum or sums of money shall be borrowed at a greater interest than eight per cent per annum, nor shall the interest on the aggregate of all the sums borrowed and outstanding, ever exceed one-half of the city revenue, arising from taxes assessed on real property within the limits of the corporation; and in the transaction of business to grant evidences of debt, by certificate or otherwise, and to receive and hold the same from any person or party authorized by the laws of this state to execute and make such evidences."

Section 4, Article 1, Laws 1851, p. 327, is as follows:

"SEC. 4. The inhabitants of said city, by the name and style aforesaid, shall have power to sue and be sued, plead and be impleaded, defend and be defended in all Courts of law and equity and in all actions whatsoever; to purchase, receive and hold property, real and personal, within the city limits, and beyond the corporate limits for burial grounds and other public purposes for the use of the inhabitants of said city, and again to improve, lease, or sell the same for the use of the inhabitants aforesaid and the general property of the city; to protect and improve all public grounds and buildings on the river; to hypothecate or mortgage any real estate of the city and borrow money on the public faith thereof, and to do and perform all such matters and things in relation to the property of the city as natural persons could lawfully do."

Section 15, Chapter 18, Revised Statutes Missouri 1855, p. 295, is as follows:

"SEC. 15. Every promissory note for the payment of money, expressed on the face thereof to be for 'value received, negotiable and payable without defalcation,' shall be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange."

Sections 15 and 16, Chapter 86, General Statutes Missouri 1865, p. 396, 1 Wagner, Missouri Statutes, vol. 1, p. 216, ch. 18, are as follows:

"SEC. 15. Every promissory note, for the payment of money to the payee therein named, or order or bearer, and expressed to be for value received, shall be due and payable as therein expressed and shall have the same effect and be negotiable in like manner as inland bills of exchange.

"SEC. 16. The payees and indorsees of every such negotiable note, payable to them or order, and the holder of every such note payable to bearer, may maintain actions for the sums of money therein mentioned against the makers and indorsers of them in like manner, as in cases of inland bills of exchange, and not otherwise."

Sections 649 and 700, Revised Statutes United States 1875, Tittle 13, chs. 7 and 11, pp. 117 and 129, are as follows:

"SEC. 649. Issues of fact in civil cases in any Circuit Court may be tried and determined by the Court without the intervention of a jury whenever the parties or their attorneys of record file with the Clerk a stipulation in writ-

ing waiving a jury. The finding of the Court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury.

"SEC. 700. When an issue of fact in any civil cause in a circuit is tried and determined by the Court without the intervention of a jury, according to section six hundred and forty-nine, the rulings of the Court in the progress of the trial of the cause, if excepted to at the time and duly presented by a bill of exceptions, may be reviewed by the Supreme Court upon a writ of error or upon appeal; and when the finding is special the review may extend to the determination of the sufficiency of the facts found to support the judgment."

ARGUMENT.

There is one point at the very beginning of this case which we think will make it unnecessary to investigate it upon its merits.

I.

This case was tried to the Court without the intervention of a jury, and there was no *stipulation in writing filed with the Clerk of the Court waiving a jury* (Sec. 649, *supra*), and there is none in the record. There was no finding of fact by the Court, general or special. The only reference in the record to the method of trial is contained in the judgment entry (Record, p. 8), which recites that, "both parties being ready, the same is submitted to the Court for trial without the intervention of a jury upon the pleadings,

proofs and arguments of counsel." That being true, there is nothing in the record which can be brought before this Court for review.

Flanders *vs.* Tweed, 9 Wallace, 425.
Kearney *vs.* Case, 12 Wallace, 275.

Section 700, *supra*, provides for a review of the rulings of the Court below in the progress of the cause tried to Court without a jury if excepted to at the time and duly presented by a bill of exceptions, but is expressly limited to cases tried according to section 649, where the jury is waived in writing filed with the Clerk.

The plaintiff in error did present its bill of exceptions (Record, p. 9) and excepted to the introduction of evidence introduced by defendant in error (Record, p. 24) and excepted to the action of the Court overruling its motion for a new trial (Record, p. 24), and its bill of exceptions was signed (Record, p. 24). But section 649 has not been complied with—there is no waiver of a jury in *writing*. There is no question upon the pleadings presented, and the ruling of the Court below is therefore final and conclusive.

The statement of the record is simply that there was a *trial without a jury*. That is not equivalent to a statement that section 649 was complied with. The record should show a copy of the agreement filed, that this Court may determine for itself whether the act was complied with. (Flanders *vs.* Tweed, 9 Wallace, 425–31.) There is not even an affirmative statement in the record that such writing was filed, and this is the very least evidence which this Court would entertain of a compliance with said statute. (Kearney *vs.* Case, 12 Wallace, 275–83.)

II.

The judgment of the Court below was right upon the merits, even if the above points were not fatal to plaintiff in error on this appeal. We have not been favored with a copy of an argument for plaintiff in error, and do not know on what point or points they rely to reverse the judgment in our favor, and will revert to only such objections as have been made in argument on the various discussions of the case in the Court below and those put in issue by the pleadings and record. The bonds are payable to bearer for *value received, without defalcation.* Section 15, *supra*, act of 1855, provides that every promissory note for the payment of money, expressed on the face to be for "*value received, negotiable and payable without defalcation,*" shall be due and payable as therein expressed * * * and be negotiable * * * as inland bills of exchange. It was said that because the bond issued in 1858 did not have the exact words contained in the statute (the words negotiable and payable being omitted) they were not negotiable instruments, and the properties of negotiability did not apply, and this defendant in error could not therefore be a *bona fide* purchaser, and were subject to equities. We submit, that if the statute were applicable to these bonds, the recital in them is a sufficient compliance therewith, and there is nothing in the decisions of the Supreme Court of Missouri binding this Court to hold to the contrary.

Section 15, *supra*, acts of 1865, omit entirely the words in quotation above. This last act is not confined to instruments thereafter executed, but applies as well to those then in existence. It says *every promissory note*, for the payment of money to the payee therein named, or order,

or bearer, and expressed to be for *value received*, shall be * * * negotiable * * * as inland bills of exchange. It ~~is clearly retrospective, and~~ was enacted to cover just such cases as this, where the statute had not been literally followed.

It is unnecessary to discuss that point further, as the Supreme Court of Missouri has disposed of the question against plaintiff in error, holding that bonds of this character—municipal bonds issued to railroads to pay for stock—do not come within the perview of the act; that the Legislature had in view classes of paper called into use for different objects than that contemplated by such bonds—paper that is not usually employed in banking and commercial operations, and not adapted to or intended for such uses. They are payable to bearer, and import a consideration. Here are the ordinary elements of negotiability, and such instruments are held by this Court to be negotiable.

Barrett *vs.* Schuyler Co. Ct. 44 Mo. 197.
Citing Moran *vs.* Miami Co., 2 Black. 722.

Section 16, *supra*, provides that all such instruments payable to order or bearer, are suable by the holder or bearer thereof in his own name without any written assignment thereof. See, also:

Borka *vs.* Nuella, 28 Mo. 180.
Lewis *vs.* Bowen, 29 Mo. 202.
Williard *vs.* Moies, 30 Mo. 142.
Roberts *vs.* Bolles, 11 Otto, 119.
Collins *vs.* Gilbert, 4 Otto, 753.
Lincoln *vs.* Iron Co. 13 Otto, 412.

There is no allegation of fraud or want of power, and the plaintiff is *prima facie* a *bona fide* holder:

Collins *vs.* Gilbert, 4 Otto, 753.
Murray *vs.* Lardner, 2 Wall. 110.
Goodman *vs.* Simonds, 20 How. 343
Swift *vs.* Tyson, 16 Peters, 11.

III.

The only denials in the answer are that the Council decided the number of votes to be 316 for ratification of subscription and 32 against it;

Or that said number was a large or other majority of the voters voting at said election in ratification of said subscription;

Or that the order to issue the bonds was in compliance with any ratification of subscription;

Or that the subscription was ratified as required by statute.

Admits the issue of the stock subscribed for and its receipt by the city, but says it was valueless.

These, then, were the only questions put in issue—all other allegations of the petition stand admitted. The charter of the city of 1845, laws of 1845, p. 126, section 15, article *supra*, is a public act by its terms, and the Court will take judicial notice of it. (Bowie *vs.* Kansas City, 51 Mo. 454.) There is an amended charter of 1851 which does not contain the above section—but it contains no repealing clause, and all parts of the first charter not expressly repealed as of course stand. The amendment of 1857 does

not state on its face that it is a public act, but it of course follows the charter itself in that regard. This amendment has, however, been judicially determined to be a public act. (Fauntleroy *vs.* Hannibal, 1 Dillon, 118.) See, also:

State *vs.* Mayor, 11 Humph. 217.
Alderman *vs.* Finley, 5 Eng. (Ark.) 423.
Beatty *vs.* Knowles, 4 Peters, 152–157.
West *vs.* Blake, 4 Blackf. 234.
Briggs *vs.* Whipple, 7 Verm. 15–18.
Case *vs.* Mobile, 30 Ala. 538.
Young *vs.* Bank, 4 Cranch, 384.

Section 10, Article 1, Charter of 1851, *supra*, makes it necessary for a person to be a taxpayer in order to be a voter. It designates who shall vote, and they must all pay taxes before they are eligible. The amendment to the charter of 1857 (section 3, *supra*) provides that said subscription shall, before it shall be valid, be ratified by a majority of the taxpayers at a poll to be open for that purpose. The certified copy of the poll-books put in evidence (Record, pp. 12, 15 and 17) shows the total number of voters in the city to have been at that time 388; the number voting for ratification, 316; against it, 32; the total number voting on the question of ratification was 348; the total number voting for Mayor 373. Then there were 40 registered voters not voting on this question, 15 not voting for Mayor, and only 37 included in the last two above not voting at all. The majority of those voting on the question of ratification in favor of it was 284; the majority in its favor on the total vote for Mayor was 259, and the majority in its favor over the whole voting population, as shown by said poll-books, 244 (*supra*, p. 6) This was also a general election for city officers, and, under section 10, article 1, *supra*, only taxpayers could be voters, hence

that record shows all the taxpaying voters as contemplated by the statute, and that list is *prima facie* correct. But there can be little question but what the word taxpayers, as used, means voters, and it was so construed and acted upon by counsel for plaintiff in error below. The number of voters can only be determined by the number voting—that is at least *prima facie* correct:

State *vs.* Winkelmeier, 35 Mo. 103.
Cass Co. *vs.* Johnston, 5 Otto, 360.
State *vs.* St. Joseph, 37 Mo. 272.
St. Joseph *vs.* Rogers, 16 Wall. 664.

This was a general city election for city officers, and it is presumed, until the contrary is shown, that the list of those voting contains all the taxpayers, and certainly that they are all shown by the poll books. The statute could only have been intended to include the taxpayers entitled to vote—it could not have been intended to include women and non-residents and minors. Such a construction would be unreasonable and defeat the object of the statute—and that construction will not be given it when it will bear a reasonable one, and one that will uphold the acts of the city under it—one that has been given it by the city officers, and one that will protect the rights of innocent third parties.

If there is any doubt about it the city officers have placed an interpretation upon it—it will bear that construction, and they are bound by it. Certainly so when they have gone on, made the subscription, received the stock, issued the bonds and paid interest upon them, and left that interpretation unquestioned for a period of twenty years:

Meyer *vs.* Muscatine, 1 Wallace, 391.
Van Hostrop *vs.* Madison, 1 Wallace, 297.

James *vs.* Milwaukee, 16 Wallace, 162.
Adams *vs.* Lawrence Co. 4 Pitts. Rpt. 64,
Woodhull *vs.* Beaver Co. 3 Wall. p. 278.
Scanlan *vs.* Childs, 33 Wis. 663.
Lynde *vs.* The County, 16 Wallace, 12.
Police Jury *vs*, Britton, 15 Wallace, 566--572.
S. L. I. & T. Co. *vs.* Lanier, 5 Fla. 110.
Hitchcock *vs*, Galveston, 6 Otto, 341–51.
State Board *vs.* C. S. Ry. Co. 47 Ind. 407.
Allegheny *vs.* McClurkin, 41 Pa. St. 81.
Maher *vs.* Chicago, 38 Ill, 266.
Gas Co. *vs.* San Francisco, 9 Cal. 453–69.
Argenti *vs.* San Francisco, 16 Cal. 256.

There is no recital in the bonds of a vote, but the records of the proceedings of the City Council of November 4th, 1857 (Record, p. 20), canvasses the election returns, and it is there shown that the vote for ratification was 316; against it, 32 votes. It is true that it does not say what the majority is—does not say that there is a majority at all—but the vote is given, and it requires nothing but a slight mathematical calculation to show what the majority is. That there is a majority for ratification is self-evident at a glance.

This recital appearing in the records is as conclusive an estoppel as though it appeared on the face of the bonds themselves:

Township of Rock Creek *vs.* Strong, 6 Otto, 271.
Randolph Co. *vs.* Post, 3 Otto, 502.
Harter *vs.* Kernochan, 13 Otto, 562.
Bonham *vs.* Needles, 13 Otto, 648.

The city officials have acted upon the assumption that the proper vote was had and the subscription duly ratified —consummated the subscription and issued the bonds and received the stock. It was their province to determine the

fact. They did so. If there was any error or mistake, it was that of the city officials, and as against an innocent third party the city is estopped by the acts of its authorized agents:

East Lincoln *vs.* Davenport, 4 Otto, 801.
Supervisors *vs.* Galbraith, 9 Otto, 214.

The City Council directed the Mayor to issue the bonds in accordance with calls on the capital stock made by order of the Board and in pursuance of the ordinance of subscription (Record, p. 20), and appointed an agent and vote the stock, and levied taxes to pay interest, and paid it (Record, p. 20, *et seq.*). The ordinance of October 22d, 1857, directed the Mayor to subscribe to the stock of the Pike County Railroad, having its western terminus on the banks of the Mississippi in Illinois opposite the city, within half a mile of the western terminus of the Suy Carty plank road, said stock to be paid in bonds of the city at par, running twenty years, bearing ten per cent interest payable semi-annually. That the Mayor be directed to cause a poll to be opened in the city for the purpose of obtaining a ratification of said subscription by the taxpayers of the city, in accordance with the provisions of section 3 of the act of February 27th, 1857, *supra* (Record, p. 19). The election held was in pursuance of that ordinance. (See the oaths of the judges of election and their returns to the Council. Record, pp. 11–13, *et seq.*) The result of these recitals in said record is to conclusively estop the city from setting up any irregularity in the exercise of the power conferred by said act, or in carrying into effect said act and said ordinance enacted thereunder, such as an improper submission of the question of ratification, the result of the vote thereon or failure to fulfill the condi-

tions on which the subscription was made, or that the ratification was not by the taxpayers, or that the railroad did not have its western terminus as stated, etc. See cases *supra*, and

Pendleton Co. *vs.* Amy, 13 Wall. 297,
Schenck *vs.* Supervisors, 5 Wall. 772.
Pompton *vs.* Cooper Union, 11 Otto, 196--204.
Township of Rock Creek *vs.* Strong, 6 Otto, 271.

The issuance of the bonds by the proper officials is a decision that the conditions precedent have been complied with:

Flagg *vs.* Palmyra, 33 Mo. 446--494.
Town of Venice *vs.* Murdock, 2 Otto.
Barrett *vs.* Schuyler Co. 44 Mo, 197.

And that decision is conclusive:

Darlington *vs.* La Clede Co. 4 Dillon.
Huidekoper *vs.* Buchanan Co. 3 Dillon, 175.

This dispsoes of all the questions put in issue by the answer (Record, p. 7). They were all decided in favor of the defendant in error by the court below, and, upon the record presented, it must be apparent to this court, was in harmony with its prior decisions, and should be affirmed for that reason.

IV.

There is an equally strong reason for such affirmance, and that is that there were no special findings upon these issues. The only finding was: "*The Court finds the issues for the plaintiff.*" Which has simply and only the force and effect of a general verdict by a jury, is conclusive of

all the facts incident thereto, and raises no question which, upon this record, is open to investigation and review by this Court. They are merely questions of fact upon the issues joined and not of law upon the pleadings, and on this record this Court can not pass upon the sufficiency of said facts to sustain the finding of the Court below. (Section 700, *supra.*)

Norris *vs.* Jackson, 9 Wall. 125.
Flanders *vs.* Tweed, 9 Wall. 425.
Insurance Co. *vs.* Folsom, 18 Wall. 237.
Coddington *vs.* Richardson, 10 Wall. 516.
Dirst *vs.* Morris, 14 Wall. 484.
Dickinson *vs.* Planter's Bank, 16 Wall. 250.
Town of Ohio vs. Marcy, 18 Wall. 552.
Prentice *vs.* Zane, 8 How. 470.
Saydam *vs.* Williamson, 20 How. 432.
Cucullu *vs.* Emmerling, 22 How. 83.
Barnes *vs.* Williams, 11 Wheat. 415.

V.

A ground of exception is that said evidence is incompetent and irrelevant.

These certified copies contain all the resolutions and ordinances of the Council showing the subscription by ordinance and the terms thereof, the poll-books and returns of the election, the canvass of the returns, directions to the Mayor to execute the ordinance of subscription, appointment of agents to vote the stock subscribed for levies, of taxies to pay interest, orders to pay coupons and to receive coupons in payment of taxes, and approval of Auditor's reports receiving coupons in payment of taxes, etc. They certainly prove the facts for which they were

introduced, and facts that were put in issue by the petition and answer. They prove allegations of the petition, and some we considered necessary to authorize a recovery, and why they are incompetent or irrelevant we can not see. By certified copy is the proper method to prove them, and they are properly certified. There is no objection on that score. We insist that they are both relevant and competent and were properly admitted.

Another ground of objection to the evidence under the same head is that the petition and amendments do not state facts sufficient to constitute a cause of action. Wherein they are deficient is not pointed out. That is not the proper method to raise an objection to the sufficiency of a pleading—it can usually only be done by motion, demurrer, or other method pointed out by law. It can not generally be done by objection to the introduction of evidence, and if that is the only step taken can never be so done to be of effect on appeal. If the evidence is relevant to the allegation of the petition, and the allegation is material, the evidence is admissible, and it need not prove the allegation to be material, if it tends to prove it, or is a mere link in a chain of circumstances, it is sufficient.

An objection to the introduction of evidence because the petition does not state facts sufficient to constitute a cause of action is unusual in practice, though allowed in the state of Missouri.

In Bury *vs.* St. Louis, 12 Mo. 298, it was held an objection could not be made to the sufficiency of the statement of a cause of action in the petition by an objection to the introduction of evidence; that the proper way to raise it was by demurrer, and if not done in that way the

objection was considered waived. But in Syme *vs.* Indiana, 28 Mo. 335, it was held that the objection was not waived by failure to demur, and could still be made to the introduction of evidence, or by motion for a new trial, or in arrest, and this method of objection is recognized in Butler *vs.* Lawson, 72 Mo. 227. The most that can be said of these last two cases is that they recognize that method of objection. Then how is a review of the action of the lower Court thereon to be obtained? It can only be done on raising the question on motion for a new trial—assigning the specific action of the Court as ground of error. The very object of a motion for a new trial is to give the Court an opportunity to correct any errors that may have been made, and to do this the supposed error must be pointed out. It is not sufficient to make the objection during the trial—it must be repeated in the motion or cannot be considered:

Brady *vs.* Connelly, 52 Mo. 19.
H. & St. J. R. R. Co. *vs.* Clark, 68 Mo. 371.
Bishop *vs.* Ransom, 39 Mo. 416.
Richardson *vs.* George, 34 Mo. 104.

If the judgment is rendered on motion or demurrer, then the motion for a new trial is not necessary if proper exception is made:

Bruce *vs.* Vogel, 38 Mo. 104.

But this is not our case.

The motion for a new trial contained but one ground therefor, and that was "for the reason that the Court erred in admitting incompetent evidence against the objection of defendant" (Record, p. 24). Then, technically, that is the only question that can properly be considered by the

Court on this appeal, if any can be. What evidence, or on what question, or against what objection, is not pointed out. There is no error assigned which the Court below could have had an opportunity to correct. Under the statutes of the United States, as we have shown, there is no question preserved in this record for this court to pass upon. And we insist there is none even under the laws of Missouri. The objection to the sufficiency of the petition, made a ground of exception (Record, p. 24), was not renewed in a motion for new trial (Record, p. 24), and there was no motion in arrest, therefore that objection has not been saved on the record for review:

Saxton *vs.* Allen, 49 Mo. 417.
Brady *vs.* Connelly, 52 Mo. 19
Curtis *vs.* Curtis, 54 Mo. 351.
Acock *vs.* Acock, 57 Mo. 154.
Lancaster *vs.* Washington, 62 Mo. 127.
McCoy *vs.* Farmer, 63 Mo. 244.
Hannibal *vs.* Clark, 68 Mo. 374.

Whatever defects there were in the petition and amendment were cured by the judgment rendered, which has the force and effect of, and in law is a general verdict:

Frost *vs.* Pryor, 7 Mo. 314.
Palmer *vs.* Hunter, 8 Mo. 512.
Roper *vs.* Clay, 18 Mo. 383.
Frazer *vs.* Roberts, 32 Mo. 457.
Shaler *vs.* Van Wormer, 33 Mo. 386.
Richardson *vs.* Larmer, 36 Mo. 35.
Jones *vs.* Landerman, 39 Mo. 287.
Kershevel *vs.* King, 44 Mo. 401.
Case *vs.* Fogg, 46 Mo. 44.
Howell *vs.* Reynolds, 51 Mo. 154.
State *vs.* Sullivan, 51 Mo. 522.
Bowie *vs.* Kansas, 51 Mo. 454.
International *vs.* Franklin, 65 Mo. 105.

There was no such point argued in the Court below. We have examined the petition and amendment with care, and the laws of Missouri, as to what a petition should contain. We have some knowledge of the rules of the common law and the decisions of this Court on the subject, and we are quite confident that all the allegations necessary to a recovery, inartificial though they be, are incorporated in the said petition and amendment. (Record, pp. 2 and 6.) Certainly so as modified by the stipulation and waiver. (Record, p. 5.) Any objection that can be made is purely technical, and this Court will not disturb the judgment for a mere technicality which does not go to the jurisdiction, and that objection is not made. If there is any such technicality the plaintiff in error should certainly be held to have waived it by submitting to trial without raising it, and certainly so if the evidence introduced cured or supplied such defective allegation.

See Lounsbury *vs.* Purdy. 18 N. Y. 515-20.
Morton *vs.* Pinckney, 8 Bosw. 135.
And cases *supra*

VI.

Section 2 of the amendment to the charter also authorizes the issue of the bonds, and under that no vote is required.

It authorizes the borrowing of money on the credit of the city and the pledging of the revenues of the city in payment thereof, and such authority carries with it by necessary implication power to issue bonds in payment of such money borrowed. That is equivalent to authority to

borrow money for any purpose in the discretion of the city, and is in fact such authority, and that power carries with it authority to issue bonds in aid of a railroad.

Rogers *vs.* Burlington, 3 Wallace, 654, and cases *ante.*

Section 3, *supra*, of the amendment in 1857 to the charter does not in words authorize the issue of bonds. It authorizes the subscription but provides no method of payment. Section 2, *Supra*, as we have shown, authorizes the borrowing of money on the credit of the city and the pledging the revenues and public property of the city therefor. The charter of 1845 authorized the city to grant evidences of debt by certificates or otherwise (Laws 1845, Art. 5, Sec. 3, *supra*), and the charter, as amended, of 1851 authorizes the city to do and perform all such matters and things in relation to the property of the city as natural persons could lawfully do. (Laws 1851, Art. 1, Sec. 4, *supra.*)

These provisions of the charter and amendments authorize this subscription to the stock of a railroad, the borrowing of money on the credit of the city, the pledging of the revenues and property of the city, the granting of certificates and other evidences of debt, and the doing of all things that natural persons might lawfully do.

Under these statutes there can be no question but what the power arises by necessary implication for the issue of these bonds. It was not questioned in the Court below.

Meyer *vs.* Muscatine, 1 Wallace, 384.
Gilpcke vs. Dubuque, 1 Wallace, 175.
United States *vs.* New Orleans, 8 Otto, 381.
Rogers *vs.* Burlington, 3 Wallace, 654.
Kelly *vs.* Mayor, 4 Hill, 265.

Davies *vs.* Proprietors, 8 Webb, 321.
Clark *vs.* School District, 3 R. I. 199.
Mills *vs.* Gleason, 11 Wis. 491.
Railroad Co. *vs.* Evansville, 15 Ind. 395.
Reinboth *vs.* Pittsburg, 41 Pa. St. 283.
Seybert *vs.* Pittsburg, 1 Wallace, 272.
People *vs.* Brennan 39 Barb. 522.
Robinson *vs.* School Dist. 10 Minn. 345.
Galena *vs.* Corwith, 48 Ill. 423.
1 Dillon on Municipal Corporations (1st ed.) ss. 82 *et seq.* and cases cited in notes.

And this is especially so, as the said acts will bear that interpretation; and the city officials have given that as the correct interpretation, made the subscription, received, held and voted the stock for over twenty years, and still holds it; paid interest on the bonds for years, and otherwise recognized their validity:

1 Wallace, 391 and 297.
16 Wallace, 162 and 12.
6 Otto, 341-51.
and others Cases cited *supra*, ~~and others.~~

We submit that the judgment of the Court below should be affirmed:

1st. Because there was no waiver of a jury filed with the Clerk of the Court as provided by law, and hence there is nothing preserved in the record for consideration by this Court.

2d. Because there were no special findings of fact by the Court below. The judgment stands as a general verdict, and the evidence offered is conclusively presumed to be sufficient to support the same.

3d. Because there is no question of fact or law saved in this record for review. The only one we can see that was attempted to be saved, was that the petition did not state facts constituting a cause of action. That, it will be said, is a question of law, and saves itself. But this is not so. Under the Federal practice, no question was even attempted to be saved. Under the laws of Missouri none could be saved except what was put into the motion for a new trial. The only one there, is as to the competency of the evidence offered. That does not raise the question as to the sufficiency of the petition. If it was deficient it was cured by the general judgment, and the motion is too general to preserve any questions whatever upon the evidence, were not any such cured by the judgment.

4th. Because, if the Court decides that there is any question preserved for review by the exceptions taken and motion made, in the record; then the record contains everything necessary to entitle the plaintiff below to recover, and the judgment of the Court below was right upon the merits.

JAMES GRANT,
WHIT. M. GRANT,
Attorneys for Defendant in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

NO. 251.

OCTOBER TERM, 1881.

THE CITY OF HANNIBAL, PLAINTIFF IN ERROR,

vs.

THOMAS FAUNTLEROY, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF MISSOURI.

ARGUMENT FOR DEFENDANT IN ERROR,

Hannibal Printing Co., Hannibal, Mo.

FILED. 1882.

and review of plaintiff in Error's argument pages 19 to 25 herein.

James Grant

For Deft in Error.

SUPREME COURT OF THE UNITED STATES.

CITY OF HANNIBAL, PLAINTIFF IN ERROR,

Against *No. 251,*

THOMAS FAUNTLEROY, DEFENDANT IN ERROR.

ERROR TO CIRCUIT COURT, EASTERN DISTICT OF MISSOURI.

I.

The act of February 27th, 1857, under which the bonds in suit were issued is a public act. L. 1856–7, p. 421.

Portsmouth vs. Watson, 10 Mass., 96.

Cited in Bowie vs. Kansas, 51 Mo., 454.

It is and purports to be "an act to amend the Charter of the City of Hannibal." The charter of the city of Hannibal became a law on February 24th, 1845, and this charter contained the following provision:

SEC. 15. "This act is hereby declared to be a public act, and may be read in evidence in all courts of law and equity in this State, without proof."

L. 1845, Art. VIII., p. 126.

On February 14th, 1851, an amended city charter was enacted under the title "An Act to amend and reduce into one act the several acts incor-

porating the City of Hannibal." L. 1851, p. 326. This consolidated charter omitted the foregoing section fifteen declaring the law a public act, but this title cannot be cited as implying an intent to abandon the section making the charter a public law. Until the adoption of the amended constitution of July 4th, 1865, the title was no part of the statute. The section of the charter of 1845 making the charter a public act continues in force. It has never been repealed by the operation of a general repeal or a special repeal. The amended charter of 1851 did not repeal it, because the amended charter of 1851 did not repeal anything. That act contains no repealing clause. Till 1873 the only repeals ever expressed in the amendments to the city charter were merely repeals of inconsistents acts. The amendments of 1846–7 and 1860–1 afford exceptions to this rule. Those acts specially repealed certain sections, but Sec. 15 of Art. VIII. was not repealed or mentioned. That section never has been repealed. The public character of the law has always been consistent with its amendments. Section 15 of Art. VIII. of the charter of 1845 was expressly reproduced and re-enacted in the consolidated charter of 1873. L. 1873, Art. 8, Sec. 4, p. 255.

The references to the pages of the various session acts relating to the city of Hannibal are given as follows: L 1845, p. 115; L. 1845, p. 128; L. 1846–7, p. 212; L. 1848–9, p 137; L. 1851, p. 326; L. 1855, p. 483; L. 1856–7, p. 421; L. 1857, p. 356; L. 1857, p. 358; L. 1858–9, Part 1st, p. 372; L. 1859, p. 371; L. 1859, p. 493; L. 1860, p. 245; L. 1865, p. 410; L. 1865–6, p. 254; L. 1868, p. 196; L. 1869, p. 122; L. 1870, p. 302; L. 1872, p. 364; L. 1872, p. 365; L. 1873, p. 236; L. 1873, p. 255; L. 1874, p. 299.

All of these twenty-three acts, forming and amending the charter of the city of Hannibal, compose but one law. The various revisions do not disturb the continuity of the several enactments.

St. Louis vs. Alexander, 23 Mo. 483, p. 509.
Boonville vs. Trigg, 46 Mo., 288.
Bishop. vs. Schneider, 46 Mo., 472.
Billion vs. Walsh, 46 Mo., 492.
State vs. Draper, 47 Mo., 29.
State vs. Fiala, 47 Mo., 310, p. 319.
Cape Girardeau vs Riley, 52 Mo., 424.
State vs. Vernon, 53 Mo., 128.

A reference to the above citations of the various acts composing the city charter will be aided by the following suggestions: The law and custom in Missouri has been to make revisions of the general laws at stated times. These books are cited as R. C. 1825, R. C. 1835, R. C. 1845, R. C. 1855, G. S. 1865, W. S. 1870, and R. S. 1879.

The current publications of the laws of the State of Missouri are commonly known as Session Acts. These begin with Vol. 1, Territorial Laws and Session acts extending to R. C 1825. Vol. 2, Territorial Laws. not ter-

ritorial laws but session acts extending 1825 to 1835. The subsequent session acts are cited as L. 1836–7, etc. The session acts of 1855 are in two volumes; one volume being styled "Local Acts, 1855." Many of these volumes of Session Acts are in two parts with different pagings to each part, the first part containing general laws, and the second part devoted to local enactments.

II.

The municipal subscription is sufficiently averred.

The authorizing sections of the law of 1857 vest in the City Council the power to borrow money and to subscribe stock, but they prescribe no mode in which such loan shall be effected, or such subscription made.

The subscription was couched in the form of an ordinance, and as it was duly spread upon the municipal record, as an ordinance of the city, and as the bonds were signed by the Mayor as shown, this is sufficient to show due concurrence on the part of the Mayor.

Knight vs. Kansas, 70 Mo., 231.

But the concurrence of the mayor was not essential to the validity of an ordinance. Under proper circumstances the city council always could pass an ordinance without the approval of the mayor.

L. 1851, Art. V., Sec. 1. p. 326.

The averment that the city council passed the ordinance comprehends all the incidental formalities incident to its enactment, such as publication or kindred proceedings. In the case of Flagg vs. Palmyra, 33, Mo., 440, the city of Palmyra made the point that its charter declared that no ordinance should be in force till published, and in that case the ordinance had not been published until after the subscription had been made. See foot page 440 and p. 447. The court passed this point *sub silentio* and ruled in favor of the bonds.

The pleadings in this case make no such issue. There is no denial that the ordinance was passed or that it existed. On the contrary the answer pleads in aid of the petition. By twice denying that the subscription was ratified the answer expressly concedes that there was a subscription.

The law authorizing a subscription in this case simply made the city council the special agent of the city with power to make a contract with a railroad company commonly called a stock subscription. This contract was subject to ratification or rejection by a majority vote at the polls, but no other

requirement was appended and no formality other than those incident to contracts was imposed upon the proceeding.

III.

The petition sufficiently avers that a majority of the tax payers ratified the subscription.

On this point the averment is that the City Council decided that the number of votes for ratification was three hundred and sixteen. and the number against, thirty-two votes. The petition does not say whether these votes were by tax-payers or not. But it is alleged that an ordinance was passed for said election, and said election must have been a tax-payers' election; and, in fact, the ordinance did call for a tax-payers' election. Transcript p. 19. And it is alleged that, in pursuance of said ordinance, the election was held, and, therefore, the petition does allege a tax-payers' election. Now, as the petition goes on, and specifies the number of votes pro and con, and shows nearly twenty to one in favor of the ratification, the petition does allege that a majority of the tax-payers ratified the subscription.

In the case of the City of Hannibal the city charter, in force at the times involved, expressly stipulated that none but city tax-payers should be qualified voters.

L. 1851, Art, 1, Sec. 10, p. 327.

IV.

The objection at the trial to the whole evidence as incompetent and irrelevant, limited in the motion for new trial, to an objection to the evidence as incompetent, can not be made a ground of reversal.

In Clark vs. Conway, 23 Mo., 438, a deed was objected to as "illegal and incompetent," and the court ruled this objection too general to be regarded. The court said that the objector "must put his finger on the objection." P. 442.

The case of Rogers vs. Troost, 51 Mo. 470, is an authority for the objection that a particular offering of testimony is "incompetent and irrelevant," but there is no authority for such an objection to the entire case made. The case of Margrave vs. Ausmus, 51 Mo. 561, is against such general objections, and the doctrine in the latter case is approved in the case of Primm vs. Raboteau, 56 Mo. 407.

Lohart vs. Buchanan, 50 Mo. 201.
Bauer vs. Franklin, 51 Mo. 205.
Chaffee vs. Memphis, 64 Mo. 193.

In the case of Kuntz vs. Tempel, 48 Mo. 71, the objection of "incompetency and irrelevancy" as applied to a notarial certificate was held insufficient. p. 76, top.

The general objection to the whole evidence is not the equivalent of a demurrer to the evidence.

The certificate of the city clerk as custodian of the municipal records is on general principles sufficient. It is specially authorized by the earlier charter, L. 1851, p. 334, art. 6, sec. 35, as well as by the law in force at the time of trial.

L. 1873, p. 249, art. 5, sec. 29.

V.

The poll books show a legal ratification.

1st. The statute can not apply to tax-payers not otherwise qualified to vote.

The case of St. Joseph vs. Buchanan, 39 Mo. 485. p. 489, arose on a vote taken after the constitution of 1865 was adopted.

The decision construes a statute limiting the voting franchise to the "taxable inhabitants." Although this language is much broader than the term "tax-payers," the court ruled that the expression "taxable inhabitants" was not an enlargement of the class qualified to vote, but on the contrary a limitation or restriction on the class otherwise accepted as qualified voters.

The amendment of 1856-7 did not make tax-paying the only qualification. Non resident tax-payers not members of the corporation were not authorized to turn the balance on such a question. Married women and minors not able to contract were not authorized to turn the scale on the creation of a corporate contract. The utmost meaning of the word "tax-payers" in such a connection is tax-paying voters, a limitation on the class otherwise com-

posing the qualified voters of the city. It happened that this limitation being already imposed became thus repetitiously expressed, but it is none the less law.

2nd. The court is not informed of any tax-payers not otherwise qualified to vote.

As none but tax-payers could vote, the poll books necessarily show that all who voted were tax-payers. The court can not judicially know that at the time of this vote there was a single tax-payer not otherwise qualified to vote. There may have been tax-payers who were non-residents or women or minors, or free colored, but the court can not glean any such fact from the record herein.

The only tax-payers of whom the court has any information, are those who voted.

3rd. The statute cannot be applied to tax-payers otherwise qualified to vote but not voting.

Although punctuation is no part of the law it is observable that in the published law of 1856–7 (p. 422) there is no comma or other mark of punctuation separating the word "tax-payers" from the following words "at a poll."

The plaintiff in error can not banish these latter words and hold up to the court the requirement of simply a "majority of the tax-payers." "Majority of the tax-payers." What tax-payers? In the preceding section, two, (L. 1856–7, p. 421,) where qualified voters are spoken of, they are described in another way, "qualified voters of said city," then follow a comma and the words "at polls," &c. But the language as to tax-payers, does not call for the tax-payers of said city. The call is for tax-payers at a poll.

The plaintiff in error claims that this word must be so restricted as to include only the tax-payers of the City of Hannibal; a limitation implied from the law. The defendant in error claims that *a fortiori* the express limitation of tax-payers at a poll must also be imposed.

It is true, that where a greater rate of interest than ten per cent. is to be incurred Section 2 calls for "two-thirds of the qualified voters." This commutation of expression comes from the fact that Section 2, is not a new section. The original of section two is found in the amended charter of 1851.

"Sec. 10. The City Council shall have power to borrow money on the "credit of the city, and pledge the revenue and public property of the city "for the payment thereof, provided there shall not be paid either directly or "indirectly, a greater rate of interest than eight per cent. per annum, unless "two-thirds of the qualified voters of said city at a poll to be opened for that "purpose, shall instruct the payment of a greater rate."

L. 1851, Art. 6, p. 333.

This law was simply brought forward with a slight amendment, as shown. But section three was a new law. The idea of a poll of tax-payers, was undoubtedly derived from the general law of 1853. (L. 1853, p. 135, Sec. 29,) as continued in the Revised Statutes of 1855. (R. C. 1855, p. 427, Sec. 30.)

It is not pretended that the abstract word "tax-payers" is the equivalent of the abstract expression "qualified voters." No such position should be imputed to defendant in error. This case is not represented by discussion restricted to these terms. In Sec. 2 the wording is "qualified voters," but in legal effect, the expression is "qualified voter voting." In Sec. 3, the wording is "tax-payers at a poll," &c., and in natural significance as well as in legal effect the phrase is "tax-payers voting at a poll," &c.

Taking these terms with such legal effect in a charter which requires all qualified voters to be tax-payers, the defendant in error affirms that in this connection the said terms are in legal effect convertible.

4th. The statute applies solely to tax-payers voting.

In the assertion that the poll books of the city election do not show that tax-payers voted the plaintiff in error is doubly wrong.

1st. It ignores the section of the charter requiring that at all city elections none but city tax-payers shall vote.

2nd. It assumes that the expression "majority of the tax-payers" did not mean majority of the tax-payers voting.

In the first mistake the plaintiff in error contradicts the charter.

In the second mistake the plaintiff in error takes issue with all the authorities.

In all such cases the courts imply and insert the word "voting" as an element in the structure of the sentence and in the substance of the requirement. In cases like this with no adverse organic provision, the decisions are unanimous in inserting the word "voting," as the full expression of the legislative meaning. The cases at large are too familiar for citation.

Reading this law as the courts say it must be read, it gives the following result :

"Before such subscription shall be valid it shall be ratified by a majority "of the tax-payers voting at a poll to be opened for that purpose."

What then becomes of the tax-payers who did not vote? They are not involved in the administration of this law. Their existence or non-existence can not influence the legal effect of these poll books. Such non-voting tax-payers bear no relation to this statute, and indeed except in the subtle vagaries of idle conjecture they enjoy no relation to this record.

What did the word "tax-payer" mean. Did it mean simply a person whose name was on the assessor's book or on the list of licenses? The city

charter had already fixed a meaning on this word. "Those only who paid a city tax or a city license" were tax-payers for voting purposes.

L. 1851, sec. 10, art. 1, p. 327.

Thus the mere assessment lists of tax-payers could not show who had paid their taxes. Of those voting the election judges might require production of the tax receipts or other evidence of tax-paying qualifications, but the law provided no means of adjudicating the tax-paying qualification of those who did not offer to vote.

For this reason the word "tax-payers" meant simply the tax-payers voting. All the decisions of the day supported this interpretation.

St. Louis vs. Alexander, 23 Mo, 483, p. 513.
State vs. St. Joseph, 37 Mo, 270.
State vs. Binder, 38 Mo, 450.

And as none but tax-payers could be voters. the proof that a majority of the voters voting, voted for ratification is in legal effect under this particular charter, proof that a majority of the tax-payers voting voted for the ratification.

The election was a general city election, and the total number of votes cast was 388. The total number of votes cast on the proposition was 348. The number of votes cast for ratification was 316. As no one could vote unless he was a tax-payer, this result shows a ratification by a majority of all the tax-payers voting, and this is all that the law requires.

VI.

The election was valid.

The statute requires the vote of the tax-payers to be at a poll to be opened for that purpose but the statute does not super-add the words "and for no other purpose."

The fact that a poll was opened for that purpose, is shown by the poll-books. They record in a separate column opposite the name of each voter, his vote for or against the ratification. Notice of the election will be presumed, and even if the city had proved the absence of such notice, such proof could not invalidate the bonds.

Flagg vs. Palmyra, 33 Mo., 440.

The absence of recitals in the bonds, merely illustrates the doctrine of the Missouri courts, that recitals add nothing to the virtue of the security.

Steines vs. Franklin, 48 Mo., 167.
Carpenter vs. Lathrop, 51 Mo., 481.
Smith vs. Clark, 54 Mo., 58.

VII.

Either with or without a popular election, the bonds are valid.

FEDERAL RULINGS.

Municipal bonds issued for public purposes are classed with public securities, enjoying or adapted for national circulation, and as such are primarily subject to the action of the national courts.

Smith vs. Clark, 54 Mo., 58, p. 71.

But the federal courts prefer to follow the ruling local decisions in force at the time such local securities are negotiated.

Yet the federal courts reserve to themselves the exclusive right to decide what constitutes the following the local decisions, and they refuse to follow more than once.

LOCAL RULINGS.

The bonds in suit were issued by the City of Hannibal, under a specially chartered provision, as follows, to wit.

"An act to amend the charter of the City of Hannibal." * * *

"Sec. 3. Said City Council shall have power to subscribe for and take "stock in any railroad terminating at the City of Hannibal or upon the bank "of the Mississippi River, opposite to said city, in the State of Illinois; but "before such subscription shall be valid, it shall be ratified by a majority of "the tax-payers at a poll to be opened for that purpose. All acts and parts "of acts which conflict with this act, are hereby repealed. This act shall take "effect from and after its passage."

Approved Feb. 27th, 1857.

L. 1856–7, 621.

Although the authorizing section of the law of Feb. 27th, 1857, does not say that the city shall or may issue bonds, yet the original charter empowers

the city council "in the transaction of business to grant evidences of debt by "certificate or otherwise."

L. 1845, art. 5, sec. 3, p. 120,

And the amendment of 1851 empowered the city "to do and perform all such "matters and things in relation to the property of the city as natural persons "could lawfully do."

L. 1851, art. 1, sec. 4, p. 327.

The bonds in this case bear date April 1st, 1858. The public attitude at the time towards similar bonds was eminently favorable. On March 4, 1857, the state had put into force a law entitled "An act to establish and maintain the public credit of the State of Missouri" exempting from state, county, city or other taxation, "all bonds issued by any county, or city or other corporation in this state for the purpose of paying any subscription by such county, city or other corporation for stock in any railroad company chartered by this state."

L. 1856–7, p 177.

This law was created at the same session when the City of Hannibal was authorized to subscribe stock in any railroad company.

L. 1856-7, p. 421.

Up to the time of the issuing, to wit, the date of the bonds in this case, there had been no state decision on a suit to collect any such bonds or the coupons or interest thereon. On such a question the state decisions appear to have been blank. At October term, 1856, there was a decision in the case of St. Louis vs. Alexander, 23 Mo., 483, involving stock subscription to railroad company by city and county. The suit was injunction by city and county as stockholders to prevent the officers of the railroad company from improperly dealing with the assets of the railroad corporation. The question of the validity of the stock incidentally arose, but the court refused to decide it in that kind of action. Neither bonds nor bondholders were in that case. But the exhaustive treatment awarded by the court made that case a leading authority on railroad stock subscriptions by counties, cities or other municipalities. Still, it was an authority merely on subscriptions and not an authority on the rights of the holders of negotiated bonds. It was an authority on questions *in limine*. It was an authority on cases arising between the railroad company or its officers and the municipality making the subscription.

Between the the primary parties to the subscription, that case established the following propositions, as follows:

1st. By implication, the power of the Legislature to authorize railroad stock subscriptions by municipalities was asserted.

2d. By implication, the power of the Legislature to authorize such railroad stock subscriptions to foreign corporations for railroads situate outside of the state, was also asserted.

3d. The power of the legislature to authorize such railroad stock subscriptions, conditioned on the result of a popular election held for the purpose, was also asserted.

4th. It was declared that, when the law stipulated for such election, the provision was mandatory, and the election with the required majority of votes, constituted a condition precedent to the subscription.

5th. It was held that a majority of the ballots cast answered the legal requirement of a majority of the voters. P. 513.

Between the primary parties, decisions on the necessity of a vote have since been made.

Leavenworth vs. Platt, 42 Mo. 171.

But such decisions have never been applied to cases of suits by holders of negotiated bonds.

The discrimination is handsomely expressed in a number of cases.

State vs. Saline, 48 Mo. 390, p. 391.

Mandamus to levy a tax to pay railroad subscription bonds. See

Same Case, 45 Mo. 242, p. 250.
Smith vs. Clark, 54 Mo. 58, p. 77.

Suit on coupons of railroad subscription bonds.

State vs. Curators, 57 Mo. 178.

A proceeding in equity to prevent the issue of school bonds.

In this case the court says as follows: "When the proposed issue is "not sanctioned by the requisite vote, we think it a suitable time to prevent "the issue. After such bonds have been put upon the market and purcha- "sers have invested in them, the question of their validity depends upon es- "sentially different principles." P. 184.

But although at the time of the issuing of the bonds in this case, there was no state decision on the *quantum* of proof required of a bondholder to sustain such bonds in an action on the same, there was a very early state decision, involving the principles which regulate the validity of municipal bonds issued without adequate authority.

In the case of Ruggles vs. Washington Co., 3 Mo., 496, October term, 1834, certain county commissioners in building a court house, did not comply with the terms of their authority, and yet the bonds which they issued for this purpose, were enforced against the county. Decisions supporting municipal bonds in such cases, often proceed on the presumption in favor of *bona fide* purchasers in market, but this decision proceeds on the theory of ratification.

The principle and the effect are in either case the same, the validation of an otherwise void act.

In the case last named, the court words its views as follows:

"We think it is a settled rule of law as well as justice, that where an agent "does any act for the use of his principal and the principal enjoys the benefit "and fruits of the act, it is too late afterwards for him to say that the act was "not legal or was not by his authority; a person may by matter *ex post facto* "ratify the unauthorized acts of an agent; see to this point,

"2 Starkie on Ev., p. 58.

"We see no reason why the county acting by the County Court, can "not do the same.

"We are of the opinion that the county of Washington can not avoid the "payment of these bonds on this ground."

Five years after the emission of the bonds herein sued on the state supreme court for the first time was called on to decide the rights of a holder of a municipal bond issued for purposes of railroad subscription. The case of Flagg vs. Palmyra, 33 Mo. 440, arose on a petition for mandamus to compel a city to levy taxes to pay interest on such bonds. The case was thoroughly contested on the merits, but the state supreme court held that the issuing of the bonds authorized the holder to presume that all pre-requisites had been complied with. In this case there really was a popular election of some kind and the subscription was colorably carried, but the language of the court was broad enough to cover cases of no attempt at election. This was at March term 1863. The bonds now in suit had still fifteen years before maturity to circulate in the commercial channels of the nation as undishonored paper backed by the above decision. In that case the statute required the popular election on the question of railroad stock subscription.

In the case of Hannibal, &c., vs. Marion Co., 36, Mo. 295, Oct. T. 1865, the statute did not stipulate for a popular election. A suit was brought against the county by the railroad company itself on a warrant given for county indebtedness for subsription to the stock of said railroad.

The defense was that the County Court, as agent, had not pursued its power. But the county was held to have ratified the act.

In the case of State vs. St. Joseph, 37 Mo., 270, Feb. Term, 1866, mandamus to compel the issuance of municipal bonds, the Supreme Court held

in reference to popular election for such purpose that "majority" meant majority of voters voting. So in the case of State vs. Binder, 38 Mo., 450, Oct. Term, 1866, this doctrine was re-affirmed. In Columbia vs. Meier, 39 Mo., 53, 1866, this doctrine was applied to members of a private corporation. In St. Joseph vs. Buchanan, 39 Mo., 485, Feb. T., 1867, mandamus to compel a subscription of railroad stock, this doctrine was accepted without dispute.

This case is also valuable because it holds that under the stringent provisions of the amended constitution of 1865, a frontier city could be authorized to make such subscriptions to a foreign corporation, with its railroad entirely in an adjoining state. The point was expressly made and as expressly decided.

In the case of Barrett vs. Schuyler, 44 Mo., 197, March Term, 1869, the law required a popular election to authorize the railroad subscription. There was no attempt at an election, but the bonds were issued and mandamus was brought to compel a tax for payment thereof. This proceeding was sustained both on the theory of ratification and of the presumption in favor of the validity of the bonds. The broad language of the case of Flagg vs. Palmyra was specially invoked and approved in application to a case where no election had been attempted, p. 201. This point was made in the return and decided by the Court.

This case is also valuable as a direct decision in favor of the negotiability of the bonds in suit, although such bonds are under seal and omit the statutory words then prescribed as the condition of negotiability of promissory notes. P. 200.

When this decision was made the bonds in suit had still nine years to run before maturity.

The law as it existed up to this time must be taken as the law of this case. No subsequent action of the courts could deprive the holders of these bonds of the benefit of the preceding decisions. No subsequent change of ruling can be cited as controlling authority in this case.

2 Sto. Eq. Jur. 8th Ed., p. 772, Sec. 1580.
1 Kent Com., 11th Ed., p. 506, side 465 (*a*).
State, &c., vs. Saline, 45 Mo., 242, p. 250.
Sappington vs. Oeschli, 49 Mo., 244, p. 248.
State vs. Miller, 50 Mo., 129, p. 133.
Osage vs. Morgan, 53 Mo., 156, p. 158.
Smith vs. Clark, 54 Mo., 58, p. 74.
State, &c., vs. St. Louis, 62 Mo., 244, p. 246, foot.

In the case of Steines vs. Franklin, 48 Mo., 167, the county court contracted for the macadamizing and bridging of a county road. The road was built and the bonds issued under a law which required a popular election to authorize the bonds. Certain citizens of Franklin county then filed a bill in equity to rescind the contract and cancel the bonds. The court held that as the county court was an agent and had not pursued its power the bonds were invalid because there had been no ratification as in Hannibal vs. Marion,

36, Mo., 294, and Barrett vs. Schuyler 44 Mo., 197. The court laid great stress on the fact that no election had been attempted. This was made the distinguishing point, depriving the *bona fide* holder of the presumption of regularity. To support this theory and distinguish this case from the case of Barrett vs. Schuyler *supra*, the court roundly asserted that in the case of Barrett vs. Schuyler, the qualified voters had voted to confer the authority. A court can with impunity misapprehend the facts in the transcript of a case at bar, but it is always perilous to be inaccurate as to the statements of a published decision. In the case of Barrett vs. Schuyler 44, Mo., 197, the respondent made the direct point that no election had been held, (p. 199), and the decision nowhere asserts that a popular election had been held, and the opinion concedes that no popular election had been held when the bonds were issued.

Thus the case of Barrett vs. Schuyler, 44 Mo , 197, still stands as good authority on a question arising where in disobedience of the statute, railroad stock subscription bonds have been issued without any attempt at a popular election.

The case of Steines vs. Franklin, must be taken under the explanatory comment of the limiting case of State vs. Saline, 48 Mo., 390, Aug. Term, 1871; mandamus to compel a tax for the payment of railroad subscription bonds of a county. In that case there was a popular election, but the record showed that the question was submitted in an illegal shape. The court held that where the question had been submitted to the people, and the proposition had been apparently carried, the invalidity of the submission could not defeat the negotiated bonds.

But in the case of Carpenter vs. Lathrop, 51 Mo., 483, Feb. term, 1873, suit on coupons of railroad subscription bonds of a town, there was a popular election on the question, and all, or nearly all the votes were in favor of the subscription. The opinion of the court required the coupon holder to show "that the authority to issue the bonds, had been conferred by an election "authorized by law, that the vote had been preserved by poll-books, or other-"wise by persons authorized to do so, and that the votes had at least been "received and passed on by some persons authorized to pass upon them and "decide whether the election had been carried, or whether the voters had "assented to the subscription."

This is the first case of the kind arising upon a statute controlled by the constitution of 1865. All the preceding cases arose on special laws, created anterior to the then new constitution, and the court had already decided in State vs. Macon, 41 Mo., 453, that the constitution of 1865 did not destroy any pre-existing special law.

Followed in Chillicothe vs. Brunswick, 44 Mo., 553.
Cited St. Louis, vs. Independent, 47 Mo., 149.
Smith vs. Clark, 54 Mo., 69.
Kansas vs. Nodaway, 47 Mo., 349.
State vs. Sullivan, 51 Mo., 522.

The advanced requirements of the opinion in Carpenter vs. Lathrop, *supra*, must therefore be limited to the case of a subscription under the general statutes of 1866 subsequent to the decision in Carpenter vs. Lathrop, Feb. T. 1873. These statutes constituted the first revision of the statutes after the adoption of the constitution of 1865. The case of Carpenter vs. Lathrop, *supra*, quotes at length the authorizing section of said constitution, and of said statutes, and the decision was nowise applicable or applied to special laws ante-dating the said amended constitution, or to any bonds ante-dating that decision.

In the case of Smith vs. Clark, 54 Mo., 58, Oct. T. 1873, a suit on coupons of bonds on account of railroad stock subscription issued prior to the amended constitution of 1865, the court *arguendo*, uses the following language.

"It is conceded in all the cases that every question as to the regularity "of the election and its results is closed against the municipal body that issues "the bonds and it is only essential to their validity in the hands of a *bona fide* "holder that some sort of an election should be held." Page 76, top.

This case of Smith vs. Clark, 54 Mo., 58, quotes at large the opinion in the case of Flagg vs. Palmyra, 33 Mo., 440, as ruling that the bondholders in the case of Flagg vs. Palmyra were, in the absence of actual notice, not held "bound to inquire whether an election had been held, as to the making "of a subscription of stock."

The case of Smith vs. Clark, 54 Mo., 58, is cited on other points in State vs. Greene, 54 Mo., 550, and its doctrines are re-affirmed in State vs. Sutterfield, 54 Mo., 397.

The latter case arose on a provision in the amended constitution of 1865 relative to the vote required to remove a county seat. In that case the fact that the constitution of 1865 for the first time provided for a registry list of the qualified voters was held to change the requirements of the vote of a "majority of the qualified voters," and to demand the vote of a majority of all qualified to vote instead of as previously a majority of the voters voting.

But as to subscriptions made, or popular elections held, or municipal bonds issued before the amended constitution of 1865, there is no case impairing the authority of Smith vs. Clark, 54 Mo., 58. As to the construction of certain special laws prior to the constitution of 1865, the case of State vs. Garrontte, 67 Mo., 455, 469, has abandoned the position taken in Smith vs. Clark, *supra*, but in other respects the latter case continues as to its subject matter, the later and leading authority on cases arising on laws in force prior to the amended constitution of 1865.

So with the kind of popular majority required on local subscriptions to railroad stock prior to the constitution of 1865, the case of State vs. Binder, 38 Mo., 450, continues to be paramount authority.

The case of Smith vs. Clark, 54 Mo., 58, holds that all municipal bonds issued pending the interval between Flagg vs. Palmyra, 33 Mo., 440, 1863,

and Steines vs. Franklin, 48 Mo., 167, must be governed by the law as laid down in Flagg vs. Palmyra. P. 75.

In the various local decisions prior to 1873, the state courts have professed to keep the alignment of the national rulings. The many familiar decisions of the Supreme Court of the United States have been uniformly cited with the deference due to such an authority, and by means of such citations the Federal decisions possess a certain local virtue as imported precedents. Thus in the case of Barrett vs. Schuyler, 44 Mo., 197, the state court cited Moran vs Miami, 2 Black 722, (p. 201), and Knox vs. Aspinwall, 21 How. 539, (p. 202). In the case of Steines vs. Franklin, 48 Mo., 167, the state court undertook to distinguish these and other national decisions, but as to municipal bonds voted prior to the amended constitution of 1865, the state court still professes to be in harmony with the Supreme Court of the United States except as to the effect of recitals in the bonds.

Carpenter vs. Lathrop, 51 Mo., 494.

The general result of the foregoing authorities is as follows:

1st. That in an action on any municipal bond negotiated prior to the decision in Steines vs. Franklin, 48 Mo., 167, March Term, 1871, the *bona fide* holder is not required to prove a popular election.

2nd. That in an action upon any municipal bond negotiated prior to the decision in Carpenter vs. Lathrop, 51 Mo., 485, February Term, 1873, the *bona fide* holder is not required to prove more than an alleged popular election colorably carrying the subscription.

3rd. That in an action upon a municipal bond issued under the authority of statutes controlled by the amended constitution of 1865 and negotiated at a time subsequent to the last named decision, the *bona fide* holder is required to prove a popular election with a duly canvassed result in favor of the subscription.

The particular result of the foregoing authorities, is as follows:

1st. That under the law co-temporaneous with the bonds in suit, a holder of such bonds was not required to prove an attempted popular election.

2nd. That under the state decisions in 1871, such holder would not be required to prove such a popular election as would authorize the emission of the bonds.

3rd. That under the state decision, in Oct. term, 1873, such holder was simply required to prove a popular election of some sort on the question.

Smith vs. Clark, 54 Mo., 58, p. 76.

THE CONSIDERATION.

It is true that the bonds, when issued, were not negotiated to raise the money, but instead thereof were paid directly for the stock.

But this course was recognized in St. Louis vs. Alexander, 23 Mo., 517, foot, and sustained in Flagg vs. Palmyra, 33 Mo., 449, foot, as the approved method of accomplishing the contemplated result.

While it has not been alleged that the railroad has been built, it cannot be denied that the railroad has been built as stipulated and the local decisions are uniform that such a question is not relevant in such a case.

Carpenter vs. Lathrop, 51 Mo., 492.

CORPORATE RATIFICATION.

The record in the case at bar, very minutely reveals all the required particulars of a popular election, ratifying the subscription. Beyond this the record manifests much subsequent action ratifiying the issue of the bonds.

The petition alleges the defendant's payment of all the interest on the bonds in suit, up to 1874—and this is not denied.

The answer denies the ratification of the subscription, but not the ratification of the bonds. The petition alleges that the city appointed agents to vote on its stock and issued the bonds, and has retained its stock, and this is not denied.

In the case of Barrett vs. Schuyler, 44 Mo., 197, p. 201, the voting of the stock for twelve years was held to ratify the subscription.

LEGISLATIVE RATIFICATION.

In the case of Steines vs. Franklin, 48 Mo., 167, it was held that although the debt was originally void, yet that the invalidity was cured by a subsequent statute. See also Bradley vs. Franklin, 65 Mo., 638. In this way the bonds themselves if originally void could be made valid by subsequent

laws, or if originally non-negotiable, could be made negotiable by subsequent laws.

The General Assembly retained such control over municipal contracts.

As to cities, see

St. Louis vs. Shields, 52 Mo., 351, p. 354.
Hannibal vs. Marion, 69 Mo., 571.
People vs. Power, 25 Ill., 187.

As to counties, see

Conner vs. Bent, 1 Mo., 235.
Hamilton vs. St. Louis, 15 Mo., 3.
State, &c., vs. St. Louis, &c., 34 Mo., 546.
Followed, Lucas vs. Board, &c., 44 Ind., 524, p. 537.
Ray vs. Bentley, 49 Mo., 236, p. 242.
Cedar vs. Johnson, 50 Mo., 225.

And see

Barton vs. Walser, 47 Mo., p. 546.
Dillon Mun., Corp., 1st Ed., Ch. IV, Sec 34, N. 1, p. 79.

The original charter of the city of Hannibal reserved to the Legislature the power of repeal.

L. 1845, Art. VIII., Sec. 18, p. 126.

The amendment to this charter, taking effect March 3d, 1869, L. 1869, p. 122, contains the following sentence:

"In the levying and collecting of taxes to enable the city to make pay-"ments on account of subscriptions to the stock of any railroad company, "the city shall be governed by the provisions of section eighteen, chapter "sixty-three of the general statutes of Missouri applicable to such matters, "and all action of the city which has been or may be had in relation to taxa-'tion for such purposes, in accordance with the provisions of the section "aforesaid, is hereby declared binding and valid." L. 1869, p. 122.

This law concedes the existence of previous railroad subscriptions by said city.

The record before the Court does not show that the city had ever made any other railroad subscription than that involved in the case at bar. In point of fact, the city of Hannibal never did make any railroad subscriptions other than to the railroad enterprise commonly and popularly called "The Pike County Railroad."

The only possible effect of the foregoing law of 1869 is to recognize, ratify and re-affirm, and, if necessary, validate the action of the City Council in subscribing such stock.

There is a special reason why this law did not apply to any but already existing railroad subscriptions. By the amendment to the city charter, taking effect March 20th, 1861, section three of the amendment of 1857, L. 1856–7, p. 421, was changed so that instead of "tax payers" it read "resident tax payers on real estate." Under the amended constitution of 1865, Art. XI. Sec. 14, this statute was not enforceable until properly amended so as to read "qualified voters." St. Joseph vs. Buchanan, 39 Mo., 485, February Term, 1867. As no such amendment had been made, the city, in 1869, had no power to make a railroad stock subscription.

On March 8th, 1873, was enacted in effect a consolidated charter professedly repealing all chartered provisions not recast in that consolidation. This repeal could not affect subsisting contracts. Such rights were expressly preserved by section 3 of art. 8, L. 1873, p. 255. The consolidated charter contains the following provision.

"SEC. 2. All ordinances and resolutions now in force in the city of "Hannibal previous to the passage of this act and not inconsistent therewith "shall remain in force until altered, modified or repealed under this act.

L. 1873, art. 8, p. 254.

VIII.

The statement of facts by counsel for plaintiff in error, is not full enough to present the case. Further reference is made to the brief of defendant in error.

The plaintiff in error assigns as error.

1st. That the bonds ought not to have been admitted in evidence, because no authority was shown for their issue.

2nd. The ordinances incompetent because they do not amount to a ratification.

3rd. No evidence of a ratification by *tax-payers;* and ordinances as to revenue incompetent.

4th. Resolutions as to appointment of agents to vote stock incompetent as stock, admitted to be of no value.

5th. Ordinance as to poll-tax, incompetent.

6th. No authority shown for issue of the bonds in first place. No ratification of issue. None could result from the facts shown. Facts shown work no estoppel.

The argument is confined to two points :

1st. Whether authority is shown for the issue of the bonds.

2nd. Whether the facts in the record work an estoppel upon the city.

It is somewhat difficult to determine from the assignments of error and from the argument, whether the want of authority consists in the absence of a grant of legislative power to the city to issue the bonds, or a failure by the

city to comply with the conditions precedent to the issue under a proper grant of power.

The former is purely a question of law; the latter one of fact only. The bonds themselves recite no law for their issue, but if the law exists, that is sufficient, whether recited in the bonds or not.

Commissioners Johnson Co. vs. January, 4 Otto, 202.
Smith vs. Clark Co., 54 Mo., 58.
Chouteau vs. Allen, 70 Mo., 190.

And as counsel for plaintiff in error under the first point in their argument, (p. 7) say "no authority to issue the bonds is shown by the evidence offered by the defendant in error," and on p. 10 at "b" admit that the charter is a public law, and hence need not be offered in evidence, they can not intend to deny that the charter gives authority for the issue, and they can only mean to contend that the condition precedent, contained in Sec. 3 of the amendment to the charter of 1857, was not shown to have been complied with, and therefore authority to issue was not shown. This raises no question of law upon the pleading. It is purely a question of fact that must be properly preserved in the record to authorize this court to review it.

It was not so preserved, because there was no waiver of a jury in writing filed with the clerk, there were no special findings of fact by the court, the judgment of the court stands as the general verdict of a jury and the evidence offered is conclusively presumed to be sufficient to sustain the judgment and under the laws of Missouri, under which counsel appear to have taken the case up, no right of review is preserved because the motion for a new trial does not present the point and there is no motion in arrest presenting it and without such saving there can be no review.

The motion for a new trial is on the sole ground that the court erred in admitting incompetent evidence.

The other question argued by plaintiff in error as to whether the facts in the record work an estoppel, is also one of fact, as are all the questions presented in the assignments of error. The first one would bear a different interpretation, but as shown was not intended to do so.

This being true, the defendant in error under the authorities cited by him claims:

1st. That the waiver of the jury must be in writing filed with the clerk

Flanders vs. Tweed, 9 Wallace, 425.
Kearney vs. Case, 12 Wallace, 275.

2nd. That all questions of fact are concluded by the general judgment

Town of Ohio vs. Marcy, 18 Wallace, 552,

and other cases on page 22, of the argument of defendant in error.

3rd. That there was under the laws of Missouri no specific assignment in the motion for new trial and hence no question saved for review.

Brady vs. Connelly, 52 Mo, 19,

and other cases on pages 24 and 25 of the argument of defendant in error.

4th. And therefore this court has nothing to do but to affirm the judgment of the court below without any investigation of the question presented in argument by counsel for plaintiff in error.

IX.

But the argument of plaintiff in error will be briefly examined.

The defendant in error admits that before a valid municipal bond can be issued, there must be legislative authority for it, either by direct grant or by implication from the powers given; there is no known decision to the contrary and none is claimed.

This power is directly given by Sec. 4, Art. 1, Charter 1851, Laws 1851 p. 327, and it arises by necessary implication from the powers given in Sec. 3, Art. 5, Charter 1845, Laws 1845, p. 120, and Sec. 2 2nd 3, amendment 1857, Laws 1856-7, p. 421, (contained in the argument of defendant in error p. 8, 9 and 10). Sec. 3 of the amendment is the only one containing any condition. It authorizes the subscription and provides that before it shall be valid, "it shall be ratified by a majority of the tax-payers at a poll to be opened for that purpose." Counsel for plaintiff in error cite

Ogden vs. Davies Co., 102 U. S. 641.
Anthony vs. Jasper Co., 101 U. S. 697.

to show that there must be authority for the issue.

On that question there is no dispute. These cases contain nothing adverse to defendant in error. Anthony vs. Jasper Co., holds that where the authority exists the bona fide holder is protected against mere irregularities in the issue of the bonds. That is the law, and the only question discussed in this case by plaintiff in error is, whether the conditions precedent have been complied with or the city estopped from showing that they have not been. That raises a question, not of power but a question of fact as to whether the power has been properly exercised. The question of original authority is one thing, and the above cases and many others apply thereto. The question of the proper exercise of the power given is another thing, and raises a question of fact and not one of power. In nearly every instance of the issue of municipal bonds there are conditions precedent to be performed before the bonds can be issued, and in very few of the cases has it been proven that these conditions were complied with. The corporations have been held to be estopped by recitals in the bonds or their records, or by their acts and ratification from setting up a non-compliance with the conditions precedent. Exactly what act will work an estoppel has not been determined. But no act and no recital or ratification will cure a want of original power, because the corporation can not by reciting or asserting that it has the power, give it. It is

only where there is a total absence of legislative power that an estoppel can not be worked by a recital, ratification or other act. That is all that is decided by

Ogden vs. Davies Co., 102 U. S. 641.
Loan Association vs. Topeka, 20 Wallace 655.
Marsh vs. Fulton Co., 10 Wallace 676.
Buchanan vs. Litchfield, 102 U. S. 292.

Although in Marsh vs. Fulton Co., Mr. Justice Field in delivering the opinion of the court says, "they (the County Supervisors), could not ratify a subscription without a vote of the county, because they could not make a subscription in the first instance without such authorization." That is a mere *dictum*. The case was disposed of upon the ground that the authority did not exist at all for the issue of the bonds, and the Supervisors could not by ratification of a void act give the authority. If the authority had existed for the issue of the bonds, then it seems the court must have held that the acts set up amounted to a ratification and cured any defective exercise of the power granted. Such is the uniform ruling of this court as will presently appear.

The counsel say the ratification was to be at a *poll opened for that purpose*, and the fact that the poll was opened for that purpose on the day of the city election, invalidates it, as it was not intended that any other election should be held at that time. The law says and means no such thing. The city officials did not place any such interpretation upon it and the court will not for them. Other questions might have been voted upon at the same time.

Meyer vs. Muscatine, 1 Wallace, 384,

And as well might another election be held.

The fact that a majority of the tax-payers voting at a poll opened for the purpose of ratification, is shown because this was a city election at which only tax-payers could vote, and as a majority of those shown by the books, voted for ratification, the court found that a majority of the tax-payers at said poll had voted for ratification. That was all that was necessary, but whether sufficient for the purpose or not, is not now open for review, and this court must conclude that it was sufficient.

Counsel for plaintiff in error argue that the ordinance giving aid June 25, '59, does not show in title to what it relates. (By what law is that necessary?) That the ordinance as to revenue passed a year after vote taken, is not relevant or competent for any purpose, and that the judgments work no estoppel. All of these acts show that the city recognized the validity of the bonds—sanctioned their issue and ratified the acts of its agents in carrying out the authority conferred by the charter.

They could not well be passed before the bonds were issued, nor would they amount to a ratification, if they were. One of the judgments was by

consent, and both were paid. If these acts do not amount to a ratification, it is hard to see what would.

Counsel also say that the declared result of the election as to the ratification, is after the certificate on the result of the election, and must have been put there afterwards for some purpose not open to explanation.

It appears on the record of the city council, and in the proper book, if it was not properly there, the city had the books in its possession, and it was its duty to explain it. The presumption is that it was rightfully there, and the city did nothing to rebut that presumption. The fact that it appears after the certificate of the city officers as to result of the city election, only shows that the vote on the question was kept separate from the other and was submitted separately. It illy becomes counsel now to intimate that it is there wrongfully. It is sufficiently stated to work an estoppel.

Meyer vs. Muscatine, 1 Wallace, 383.

Counsel also argue that the ownership of stock and appointment of agents to vote the same, works no estoppel, as the stock is admitted to be valueless, but they cite no authority to sustain such a position, perhaps for the reason that there is none. The city got all it bargained for, and that is all it could ask, so far as this record shows, it got its railroad and got its stock, and enjoyed the rights and privileges of a stockholder, all the consideration passed, and that is sufficient. The stock of a railroad company, subscribed for by a corporation and for which bonds were issued, is seldom or never worth anything as an investment. All such railroads have been sold out and passed to the second and third organization before they become profitable to the stockholders, and some roads 20 years old, have never paid a dividend, at all events there is nothing to show that this stock has not had value, and that the city had not derived benefit and advantage from it. The presumption is it has. The defendant in error's admission was (Record, p. 24) that the stock was valueless, not that it had been originally valueless. In

Meyer vs. Muscatine, 1 Wallace, 384

the ordinance authorized the borrowing of money by the city for any object in its discretion, if at a regularly notified meeting under a notice stating the nature and object of the loan, the citizens determined in favor of the loan by a two-thirds majority vote. The ordinance submitted three distinct propositions. The bonds recite that the borrowing of the money was authorized by a vote of the legal electors of the city. The poll-books showed 326 votes for and 5 against the loan. The city borrowed the money, issued the bonds and took the stock. The court at p. 393, says the records show all the votes cast except 5 were in favor of the loan. The city and citizens adopted and acted upon the ordinance as valid and sufficient. The citizens voted, and the city authorities issued the bonds—no one interposed to prevent their issue. It is not questioned that all parties acted in good faith, and the city can not now be heard to object to the regularity of its own proceedings. A party

taking the bonds was bound to look to the legal authority. If that was sufficient he had a right to presume that those acting under it, had complied with its requirements.

In Gelpcke vs. Dubuque, 1 Wallace, 175, 203,

This court said, when a corporation has power under any circumstances to issue bonds the bona fide holder has a right to presume that they were issued under the circumstances which give the requisite authority. Citing Knox County vs. Aspinwall, 21 How., 539 and others.

In Rogers vs Burlington, 3 Wallace, 654–67, there was no estoppel by recital and this court said, there was a perfect acquiescence in the action of the officers of the city, no attempt was made to enjoin the proceedings. The bonds were suffered to be issued and delivered, and when that was done it was too late to object that the power conferred by the charter had not been properly exercised.

In Supervisors vs. Schenck, 5 Wallace, 772, the county did not comply with the conditions precedent, but made the subscription, took and kept the stock, and voted on it and paid some interest on the bonds. This court held that they were estopped from showing that the conditions precedent had not been complied with.

That a corporation may ratify the acts of its agents done in excess of authority, and ~~with~~ ratification will often be inferred from acquiescense, p. 782, citing Hoyt vs. Thompson, 19 N. Y., 218.

That such ratification may be by consent or conduct inconsistent with any other theory. Citing, Peterson vs. The Mayor, 17 N. Y., 453.

That subsequent ratification is as good as original authority. Citing, Mills vs. Gleason, 11 Wis., 490, et al.

That where the county receives and holds the stock and votes upon it and paid two installments of interest that was a ratification. Citing :

Johnston vs Stark Co., 24 Ill, 90.
Keithsburg vs. Frick, 34 Ill, 421.
Knox Co. vs. Aspinwall, 21 How, 544.
Bissell vs. Jeffersonville, 24 How., 287–99.

In the last two cases no interest was paid at all.

The simple taking and holding of the stock amounts to a ratification.

Pendleton Co vs. Aury, 13 Wallace, 297-305.

So does the payment of interest. Portsmouth Savings Bank vs. Springfield 4 Federal Reporter, 276, opinion by Drummond J. Either of these acts above might not in *all* cases work an estoppel, but when they are all combined as in this case there can be no question about it.

In all the above cases a ratification is held to be as good as a recital, and to effectually work an estoppel against setting up non-compliance with conditions precedent.

Dillon on Municipal Corporations, 3d Ed. Vol. 1, Sec. 547, 548, p. 542.

In all of the cases cited by the appellant, except in Buchanan vs. Litchfield, 12 Otto 279, there was a want of original power, and the cases were disposed of on that ground, and that was the power or authority referred to in the opinions.

What the learned Justice says in Marsh vs. Fulton Co., as to ratification is clearly dictum, and this court has so interpreted it and decided exactly the contrary in Pendleton vs. Aury and others since that. In Buchanan vs. Litchfield, there was a constitutional limitation which was not incorporated into the legislative act under which the bonds were issued, and the city ordinances did not recite the constitution, nor did the bonds cite the constitution. The case went up on certificate of division and the recitals were held not sufficient to estop. The question of ratification was not raised and did not apply in the case.

This is not a case of no election. There was an election for the ratification of the subscription; the records show that 316 votes were for and 32 against the ratification. All that can be claimed against the election is, that it was possibly irregular, and hence the subscription does not come even within the category of the dicta in Marsh vs. Fulton Co., but is an act that can be ratified and has been, as the records introduced and the undenied allegations in the petition show, and if the prior decisions of this court are of value as precedents, a stronger case of estoppel could not well be made out.

As an illustration of the improvident manner in which this record was preserved, it is remarked that the alleged errors are not assigned in compliance with the requirements of the rules of the Supreme Court.

Rule 21, Sec. 6 and 8.

The amendment to the city charter, enacted March 4th, 1868, (L. 1868, p. 196) recited that the city had compromised a majority of its indebtedness.

At the present time the outstanding uncompromised railroad aid bonds of said city are very scarce. Nevertheless the principles involved bespeak some hearing on the behalf of interested strangers to the record.

THOS. H. BACON,
Hannibal, Mo.

Pro Alienos.

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James Gr
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